

THE STATE OF OHIO,)
)
COUNTY OF CUYAHOGA.)

SS: NANCY McDONNELL, J.

IN THE COURT OF COMMON PLEAS
(CRIMINAL BRANCH)

FILED
COURT OF APPEALS

JUL 11 2013

Clerk of Courts
Cuyahoga County, Ohio

THE STATE OF OHIO,)
)
Plaintiff,)

vs.)

Case Nos. CR 435700 (A)
435700 (B), 435700 (C)
C/A No. 83552

CORDELL HUBBARD,
NICHOLE HUBBARD,
RU-EL SAILOR,

Defendants.)

TRANSCRIPT OF PROCEEDINGS CA03083552

VOLUME 9 of 10

APPEARANCES:

17004074

William D. Mason, Prosecuting Attorney,
Blaise Thomas, Assistant Prosecuting Attorney,
Maureen Clancy, Assistant Prosecuting Attorney,

On behalf of the State of Ohio.

Myron Watson, Esq.,
On behalf of Defendant Cordell Hubbard.

James R. Willis, Esq.,
On behalf of Defendant Nichole Hubbard.

Jimmie Mack, Jr., Esq.,
On behalf of Defendant Ru-el Sailor.

Lisa Hrovat
Robert Kraska
Mary Jean Cooley
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Official Court Reporter
Cuyahoga County, Ohio

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ICIAL COURT REPORTERS

THE STATE OF OHIO,)
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IN THE COURT OF COMMON PLEAS
(CRIMINAL BRANCH)

THE STATE OF OHIO,)
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 Plaintiff,)
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 vs. Case Nos. CR 435700 (A)
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CORDELL HUBBARD,)
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NICHOLE HUBBARD,)
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RU-EL SAILOR,)
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)
 Defendants.)

- - -
TRANSCRIPT OF PROCEEDINGS
- - -

BE IT REMEMBERED, that at the MAY, A.D.
2003 Term of said Court, this cause came on to
be heard before the Honorable Nancy McDonnell,
and a jury, in Courtroom No. 17-B, The Justice
Center, Cleveland, Ohio, on Monday, June 2,
2003, upon the indictment filed heretofore.

- - -

1 JUNE 2, 2003, MONDAY MORNING SESSION

2 - - - - -
3 (Thereupon, the jury was brought
4 into open court and proceedings
5 were as follows:)

6 - - - - -
7 THE COURT: Mr. Watson?

8 MR. WATSON: Your Honor, the Defendant
9 rests pending the submission of its exhibits.

10 THE COURT: All right. Come up to the
11 bench for one second.

12 - - - - -
13 (Thereupon, the following discussion
14 was had between Court and Counsel
15 outside the hearing of the jury:)

16 THE COURT: Are you making your Rule 29
17 now? The other day the early motions for
18 acquittal were overruled. You are renewing your
19 motion?

20 MR. WATSON: Yes, I am, reincorporating
21 the same arguments briefly made.

22 THE COURT: Miss Clancy --

23 MS. CLANCY: Yes.

24 THE COURT: -- are you reincorporating your
25 earlier motions?

1 MS. CLANCY: Yes.

2 THE COURT: Are you ready? How many
3 witnesses do you have?

4 MR. MACK: I'm going to put on two.

5 - - - - -

6 (Thereupon, the following proceedings
7 were had in open court:)

8 - - - - -

9 (The DEFENDANT, RU-EL SAILOR, to maintain
10 the issues on his part to be maintained, called as
11 a witness, LETISHEA HAMMOND, who, being first duly
12 sworn, was examined and testified as follows:)

13 THE COURT: Come around here. There are
14 two steps.

15 - - - - -

16 DIRECT EXAMINATION OF LETISHEA HAMMOND

17 BY MR. MACK:

18 Q. Good morning.

19 A. Good morning.

20 Q. Would you please state your name for the record and
21 spell your last name, please.

22 A. Letishea Hammond. H-a-m-m-o-n-d.

23 Q. Are you presently employed, Miss Hammond?

24 A. No.

25 Q. Are you attending school?

1 A. Yes.

2 Q. What school are you attending?

3 A. Christ The King GED classes.

4 Q. Now, have you ever been guilty or pled guilty to
5 a state or federal felony?

6 A. No.

7 Q. Do you know a person by the name of Ru-el Sailor?

8 A. Yes.

9 Q. Is Ru-el Sailor in this courtroom today?

10 A. Yes.

11 Q. Would you please point him out and describe for the
12 Court what he is wearing.

13 A. Dark-skinned fella with the blue suit, light blue
14 shirt.

15 MR. MACK: May the record reflect she has
16 identified the Defendant Ru-el Sailor?

17 THE COURT: The record will so reflect.

18 Q. How long have you known Ru-el Sailor?

19 A. Ten years or so.

20 Q. Would you please state for the record how is it
21 that you came to know Ru-el Sailor?

22 A. We grew up together on the same street, and he's my
23 fiance and the father of my kids.

24 Q. How long has he been your fiance?

25 A. Four years.

1 Q. You indicated that he is the father of your
2 children?

3 A. Yes.

4 Q. How many children does he have?

5 A. We have three together.

6 Q. Okay. Their names?

7 A. One is two, her name is Chantel; El-Lajye is one,
8 and Chalay is five months.

9 Q. Back on November 16th, which was a Saturday of the
10 year 2002, do you recall where you were living at that
11 particular time?

12 A. Yes.

13 Q. For the record, please tell us where you were
14 living.

15 A. With his parents. With his mom.

16 Q. Where were you so living?

17 A. On 150th Street.

18 Q. Okay. Do you recall the date of November 16th,
19 2002?

20 A. Yes.

21 Q. How is it that you are able to remember the date of
22 November 16, 2002?

23 A. We went on a Amish country trip.

24 Q. When you say, We who, if anyone, are you
25 describing?

1 A. Me, his mom, his sister, his brother, grandmother,
2 and a couple other family members.

3 Q. Okay. Do you recall approximately what time it was
4 when you left?

5 A. Yes. It was around 7, 7:30.

6 Q. Is this a.m.?

7 A. a.m., yes.

8 Q. Do you recall where Ru-el was when you left?

9 A. Yes. He was at home.

10 Q. Okay. How was it that you were able to get to the
11 Amish country?

12 A. I rode with his mom, and we went to the site we was
13 all meeting at to get on the bus, a charter bus.

14 Q. Did there come a point in time when you returned
15 back to the home on East 150th Street?

16 A. Yes.

17 Q. When you returned home who, if anyone, was present
18 at that home?

19 A. Just Ru-el and my kids.

20 Q. When you came in did you have an opportunity to
21 observe Ru-el Sailor on that particular day?

22 A. Yes.

23 Q. By the way, if I didn't ask, what time was it when
24 you arrived back?

25 A. Around between 7:30 and 8.

1 Q. This is p.m., I take it?

2 A. p.m., yes.

3 Q. Do you recall how he was dressed when you appeared
4 on that evening?

5 A. Yes, I do.

6 Q. For the record, would you please indicate or tell
7 us how he was dressed?

8 A. He had on some light blue jeans, gray and red Nets
9 jersey and white T-shirt underneath with some gray
10 Timberland boots.

11 Q. Do you know if he put that on after he left, or had
12 he had it on?

13 A. He had it on like the previous days.

14 Q. I'm going to show you what has been previously
15 marked for identification purposes as Defendant's Exhibit

16 M. Would you please take a look at this and, for the
17 record, would you please indicate what it is that I have
18 handed you?

19 A. Yes. It is a photograph of Ru-el and Cordell.

20 Q. Can you see what is depicted in there, or what
21 Ru-el is wearing in this particular photograph?

22 A. Yes.

23 Q. Is that what you were indicating that he was
24 wearing on that particular day?

25 A. Yes.

1 Q. For the record, can you please describe what it is
2 he is wearing in that photograph?

3 A. Gray Nets jersey, light blue jeans, gray boots and
4 white T-shirt.

5 Q. Did there come a point in time when either you or
6 Ru-el left the house on November 16th?

7 A. No, we didn't leave the house.

8 Q. Did he leave?

9 A. Yes, he left.

10 Q. Okay. Do you recall approximately what time of day
11 or night it was when he left?

12 A. Somewhere between 10 and 10:30.

13 Q. That night?

14 A. Yes.

15 Q. Now, when he left did he leave with anyone?

16 A. I can't recall.

17 Q. Now, do you know whether or not he was driving a
18 vehicle, on November the 16th?

19 A. Yes.

20 Q. What type of vehicle, if you recall, was he
21 driving?

22 A. It was a white focus.

23 Q. Now, when he left did he tell you where, if
24 anyplace, he was going?

25 A. He told me he was going to some lounge.

1 Q. You said that you have known him for ten years; is
2 that correct?

3 A. Uh-huh.

4 Q. You have been his fiancée for approximately four?

5 A. Yes.

6 Q. Have you had an opportunity during those particular
7 years to ever look at his head?

8 A. Yes.

9 Q. What color is his hair?

10 A. Dark brown. Black almost.

11 Q. Have you ever known him to have any -- Strike that.
12 Do you know what weaves are?

13 A. Yes.

14 Q. What is a brush weave?

15 A. It's like weaves in the hair like.

16 Q. I didn't hear.

17 A. Like good hair.

18 Q. Have you ever known Ru-el to have any weaves in his
19 hair?

20 A. No.

21 Q. Do you know if he returned home any time either the
22 16th or 17th?

23 A. Yes. It was early morning the 17th. Early morning
24 the 17th.

25 Q. Okay. Now, ma'am, do you recall whether or not any

1 time Ru-el Sailor was ever in the hospital?

2 A. Yes.

3 Q. Do you recall when it was that he was in the
4 hospital?

5 A. December the 17th.

6 Q. Of what year?

7 A. 2002.

8 Q. December the 17th, 2002 he was in the hospital for
9 approximately how long?

10 A. Like a week or two.

11 Q. Okay. Do you know what, if anything, caused him to
12 be in the hospital?

13 A. He was attacked.

14 Q. Okay. As a consequence of the attack do you know
15 if he ever did anything?

16 A. No.

17 MR. MACK: No further questions.

18 THE COURT: On behalf of the State?

19 MR. THOMAS: Thank you.

20 - - - - -

21 CROSS-EXAMINATION OF LETISHEA HAMMOND

22 BY MR. THOMAS:

23 Q. Good morning, Miss Hammond.

24 A. Morning.

25 Q. Do you know Cordell?

1 A. Yes.

2 Q. Do you see him in court?

3 A. Yes.

4 Q. Point to him.

5 A. He is the light-skinned gentleman with the white
6 shirt and the green tie.

7 Q. Do you know Leshawn McCreary?

8 A. Yes.

9 Q. How do you know her?

10 A. She's his girlfriend.

11 Q. How long have you known Cordell?

12 A. For about like four years. Since I have been
13 engaged with Ru-el.

14 Q. How long have you known Leshawn?

15 A. Probably about two months.

16 Q. Do you know who Ru-el was with after he went out
17 about 10:30 on the night of the 16th?

18 A. No, I don't.

19 Q. You say that he told you that he was going to
20 Benjamin's. Do you know if he ever got there?

21 A. Yes. Well, yes -- He say that is where he was
22 at. I didn't go with him.

23 Q. You stayed home?

24 A. Yes.

25 Q. With the children?

1 A. Yes.

2 Q. The white focus, whose car is that?

3 A. A friend of his.

4 Q. Who is the friend?

5 THE COURT: Hold on. Go ahead, Mr. Thomas.

6 MR. THOMAS: Thank you, your Honor.

7 Q. The white focus was a friend's car?

8 A. Uh-huh.

9 Q. Is that a yes?

10 A. Yes.

11 Q. What is the name of that friend?

12 A. Her name is Toni.

13 Q. Toni what?

14 A. I don't know her last name, I just know her by her
15 first name.

16 Q. Who was using the focus?

17 A. Me and Ru-el both.

18 Q. Why?

19 A. We did not have a vehicle, and I had to get my
20 daughter back and forth to school.

21 Q. Is Ru-el employed?

22 A. No, he isn't.

23 Q. He is how old?

24 A. He's 23.

25 Q. With three children?

1 A. Yes.

2 Q. Are you employed?

3 A. No, I'm not.

4 Q. Does Ru-el do anything to contribute to the support
5 of his three children?

6 MR. MACK: Objection, your Honor.

7 THE COURT: Overruled.

8 A. Yes.

9 Q. What does he do?

10 A. He works for his grandmother on a time-to-time
11 basis. She's a day care provider. She has a day care
12 center.

13 Q. I thought that you just said that he is not
14 employed?

15 A. He works for his grandmother from time to time.

16 Q. How frequently?

17 A. He is not currently employed now.

18 Q. How frequently would he work for his grandmother?

19 A. Like on every two weeks' basis. He just cleans up
20 for her.

21 Q. What was Toni's name again?

22 A. Toni.

23 Q. Just Toni?

24 A. I don't know her last name.

25 Q. How long did you have the Ford focus? How many

1 days, or weeks, or months?

2 A. Just like at that time we had it for about two
3 days.

4 Q. What time did you go to bed that night?

5 A. Probably around 11:30, 12.

6 Q. Did you sleep through the night?

7 A. Yes.

8 Q. Did you sleep without awakening?

9 A. Well, I woke up once he got home but I can't recall
10 what time exactly that was. I know it was early morning.

11 Q. Was it still dark outside, or was it getting light?

12 A. It was getting light.

13 Q. Into Sunday morning when the sun is coming up?

14 A. Yeah.

15 Q. It was the transition time from dark to morning?

16 A. Yes.

17 Q. Between the time that you went to bed and the time
18 that you got up you don't know where he was because you
19 were home in bed, right?

20 A. Right.

21 MR. THOMAS: Thank you. No further
22 questions.

23 THE COURT: Mr. Watson?

24 MR. WATSON: No questions.

25 THE COURT: Mr. Willis?

1 MR. WILLIS: No, none.

2 THE COURT: Mr. Mack?

3 - - - - -

4 REDIRECT EXAMINATION OF LETISHEA HAMMOND

5 BY MR. MACK:

6 Q. You got up the next morning after he returned early
7 morning of the 17th; is that correct?

8 A. Yes.

9 Q. Did you have an opportunity to look at his
10 clothing?

11 A. Yes.

12 Q. Did you see any blood or anything on his clothing?

13 A. No.

14 MR. MACK: No further questions.

15 THE COURT: Mr. Thomas?

16 - - - - -

17 RE CROSS-EXAMINATION OF LETISHEA HAMMOND

18 BY MR. THOMAS:

19 Q. On the issue of the clothing, did you say this is
20 the outfit you saw him in, (indicating)?

21 A. Yes.

22 Q. Including the red headband?

23 A. Yes.

24 Q. What about in the black leather that he is wearing
25 there, (indicating)?

1 A. Uh-huh.

2 Q. Do you recognize that leather?

3 A. Yes, I do.

4 Q. Do you know if he had it on that night?

5 A. Yes.

6 Q. So he is wearing a black leather jacket under which
7 he has on the gray and red New Jersey jersey?

8 A. Uh-huh.

9 Q. Is that a yes?

10 A. Yes.

11 Q. Then light blue jeans?

12 A. Yes.

13 Q. Underneath the New Jersey jersey is a white
14 T-shirt?

15 A. Yeah.

16 Q. The headband is red?

17 A. Yes.

18 Q. There is some red on the shirt?

19 A. Yes.

20 Q. What color would you call the background color of
21 the jersey?

22 A. Background color? Gray.

23 Q. Did you see Cordell Hubbard at all Saturday the
24 16th?

25 A. No.

1 Q. Did you see him at all Sunday the 17th?

2 A. No.

3 Q. Did you have any phone conversations with Cordell
4 either Saturday or Sunday?

5 A. No.

6 Q. Do you know Cordell Hubbard's cell phone number?

7 A. Yes.

8 Q. What is it?

9 A. 513-7870.

10 Q. How long have you known that to be his number?

11 A. For like a couple months or so.

12 Q. Have you ever had occasion to call that number?

13 A. Yes.

14 Q. Has it always been Cordell's number?

15 A. Yes.

16 Q. Do you know a Samuel Brown?

17 A. Yes.

18 Q. How do you know Samuel?

19 A. He is friends with Ru-el.

20 Q. Did you speak to Samuel Brown at all Saturday the
21 16th?

22 A. No.

23 Q. Or Sunday the 17th?

24 A. No.

25 Q. Do you know where Samuel was at any time during the

1 evening of Saturday or after midnight early Sunday
2 morning?

3 A. No.

4 Q. What kind of car does Cordell drive?

5 A. He has a Cadillac, and he has another car. I don't
6 recall what kind of car it is but I know it's orange.

7 Q. What kind of car does Leshawn McCreary have?

8 A. Like dark blue. I only seen the car at nighttime
9 so it looked blue in the nighttime.

10 Q. How many doors does Leshawn's car have?

11 A. Four.

12 Q. Would you recognize or remember the manufacturer if
13 it is a GM, or Ford, or Chrysler?

14 A. Leshawn's car?

15 Q. Yes.

16 A. It is a Ford Contour.

17 Q. Have you ever known Cordell to drive that car?

18 A. Yes.

19 Q. How frequently?

20 A. Just a couple times that he came to the house with
21 her.

22 Q. Have you ever known Cordell and Ru-el to travel in
23 Leshawn's car without her being present?

24 A. No.

25 Q. Cordell and Ru-el, what would you state is the

1 degree of their friendship?

2 A. They're good friends.

3 MR. THOMAS: No further questions. Thank
4 you.

5 MR. WATSON: No. questions.

6 THE COURT: Mr. Willis?

7 MR. WILLIS: No.

8 THE COURT: You may step down. Call your
9 next witness, please.

10 MR. MACK: Yes, your Honor.

11 THE COURT: Approach the bench, ma'am.
12 Just walk up to me.

13 - - - - -

14 (The DEFENDANT RU-EL SAILOR, to further
15 maintain the issues on his part to be maintained,
16 called as a witness, SHARELL SAILOR, who, being
17 first duly sworn, was examined and testified as
18 follows:)

19 THE COURT: Come around here. Have a seat
20 in the chair. Be careful, there are two steps.

21 - - - - -

22 DIRECT EXAMINATION OF SHARELL SAILOR

23 BY MR. MACK:

24 Q. Thank you. Ma'am, would you please state your full
25 name and spell it for the record.

1 A. Sharell Sailor. S-a-i-l-o-r.

2 Q. Slow down.

3 THE COURT: Say your first name.

4 THE WITNESS: Sharell.

5 THE COURT: How do you spell it?

6 THE WITNESS: S-h-a-r-e-l-l.

7 Q. What do you presently do for a living?

8 A. I go to high school, and I have a part-time job.

9 Q. Slow down. Take your time. You go to high school?

10 A. Uh-huh.

11 Q. What high school do you go to?

12 A. Collinwood High.

13 Q. What grade are you in?

14 A. 11th.

15 Q. What is your grade point average?

16 A. 2.5.

17 Q. You said that you were employed?

18 A. Uh-huh.

19 Q. Yes or no?

20 A. Yes.

21 Q. Okay. Where are you so employed?

22 A. A grocery store. Family Foods.

23 Q. How long have you been so employed?

24 A. Since September of 2002.

25 Q. What do you for them?

1 A. I'm a cashier.

2 Q. Do you know someone by the name of Ru-el Sailor?

3 A. Yes.

4 Q. Who is Ru-el Sailor?

5 A. He's my brother.

6 Q. Is he presently in this courtroom?

7 A. Yes.

8 Q. Would you point him out and describe for the record
9 what he is wearing.

10 A. He's wearing a blue striped suit with a light blue
11 shirt, and there he is right over there, (indicating).

12 MR. MACK: May the record reflect she has
13 identified the Defendant Ru-el Sailor?

14 THE COURT: The record will so reflect.

15 Q. Is he any relationship to you?

16 A. He is my brother.

17 Q. How old is your brother, do you know?

18 A. Huh?

19 Q. How old is your brother, do you know?

20 A. 23.

21 Q. You are in high school so I won't ask you what your
22 age is because you're a lady. You have known your brother
23 for a long time, I take it; is that correct?

24 A. 17 years of my life.

25 Q. All right. Have you ever had occasion to look at

1 his head to see how he wears his hair?

2 A. Yes.

3 Q. Do you know what weaves are?

4 A. Yes.

5 Q. Would you describe to the Court what your version
6 is of what weaves are?

7 A. Just little grooves in boys' hair.

8 Q. Have you ever known your brother to wear such
9 weaves in his hair?

10 A. No. He don't have good hair.

11 Q. Do you recall Saturday, November the 16th, 2002?

12 A. Yes.

13 Q. How are you able to recall November 16th, 2002?

14 A. My grandmother took a trip to the Amish country.

15 Q. Did you go on that trip?

16 A. Yes.

17 Q. Approximately what time did you wake up that
18 morning?

19 A. Around 6:00.

20 Q. Do you know approximately what time you left to go
21 to the Amish country?

22 A. Like quarter to 8.

23 Q. How did you get to the Amish country?

24 A. We drove in my mother's car.

25 Q. What kind of car?

1 A. GEO Prism.

2 Q. What color?

3 A. Blue.

4 Q. There comes a point in time when you went to Amish
5 country and you returned home?

6 A. Yes.

7 Q. Do you recall at what time that was?

8 A. Around 8.

9 Q. p.m.?

10 A. Yes.

11 Q. When you got back home who, if anyone, was present
12 at the house?

13 A. Ru-el, his two children.

14 Q. Okay. By the way, do you know what Ru-el's
15 fiancée's name is?

16 A. Letishea Hammond.

17 Q. Do you see her today?

18 A. Yes.

19 Q. Just came out of the courtroom. Did she just come
20 out of the courtroom?

21 A. No, she still sitting there.

22 Q. Okay. Do you know where they were staying on
23 November the 16th?

24 A. They were staying with us.

25 Q. Where, if anyplace, were they sleeping?

1 A. Sleeping in my room.

2 Q. Now, when you returned home you said Ru-el was
3 there; is that correct?

4 A. Yes.

5 Q. Did you have occasion to see how your brother was
6 dressed when he returned home on this particular day?

7 A. Yes.

8 Q. Would you please describe what he was wearing?

9 A. He had on a gray Nets jersey, light blue jeans, and
10 gray boots.

11 Q. You saw him?

12 A. Yes.

13 Q. Did there come a point in time when he left the
14 house?

15 A. Yes.

16 Q. Do you recall approximately what time that was?

17 A. No.

18 Q. Do you know what time he left that night?

19 A. I was in my room.

20 Q. But he was home when you were there at about
21 8 p.m.?

22 A. Yes.

23 Q. He did leave; is that correct?

24 A. Yes.

25 Q. Now, I'm going to show you what has been marked as

1 Defendant's Exhibit M. Would you please take a look at
2 this and, for the record, would you please indicate what
3 it is that I have just handed you?

4 A. You handed me a picture of my brother.

5 Q. You do recognize your brother in there?

6 A. Uh-huh.

7 Q. For the record, do you recognize anything about
8 that particular photograph?

9 A. That he had two friends.

10 Q. Do you recognize what, if anything, that he is
11 wearing in there?

12 A. Yes.

13 Q. What is he wearing?

14 A. A gray Nets jersey, light blue jeans, and gray
15 boots.

16 Q. Do you recall seeing that particular outfit?

17 A. Yes.

18 Q. When do you recall seeing it?

19 A. When I walked in the house.

20 Q. What day?

21 A. November the 16th.

22 Q. How did you get here today? Did you receive a
23 subpoena to come down?

24 A. Yes.

25 Q. Who issued that subpoena?

1 A. You.

2 Q. When I asked you to come what, if anything, did I
3 tell to do?

4 MR. THOMAS: Objection.

5 THE COURT: The objection is overruled.

6 A. You asked me to tell the truth.

7 Q. Are you telling the truth for me this day?

8 MR. THOMAS: Objection.

9 A. Yes.

10 THE COURT: Overruled.

11 MR. MACK: Thank you. No further
12 questions.

13 THE COURT: Mr. Thomas?

14 - - - - -

15 CROSS-EXAMINATION OF SHARELL SAILOR

16 BY MR. THOMAS:

17 Q. What time did you go to bed that night?

18 A. I'm really not for sure.

19 Q. You went to bed at some point?

20 A. Probably 11, 12. Probably watching T.V.

21 Q. What is the last show that you recall watching?

22 A. Usually Mad T.V. on 12.

23 Q. Mad T.V.?

24 A. Uh-huh.

25 Q. After you went to bed and fell asleep were you

1 watching T.V. in your bedroom, or downstairs?

2 A. My mother's room.

3 Q. You turned off the T.V. and went to your room
4 or --

5 A. I stayed in my mother's room.

6 Q. After you fell asleep did you sleep through the
7 night?

8 A. Yes.

9 Q. Did you awaken at any point?

10 A. Not that I can think of.

11 Q. I'm sorry?

12 A. Not that I can think of.

13 Q. You don't know when Ru-el got home that night?

14 A. No.

15 Q. You don't know who he was with that night?

16 A. No.

17 Q. You don't know where he was at any point after he
18 left home?

19 A. No.

20 MR. THOMAS: Thank you. No further
21 questions.

22 THE COURT: Mr. Watson?

23 - - - - -

24

25

CROSS-EXAMINATION OF SHARELL SAILOR

BY MR. WATSON:

Q. Have you ever watched The Apollo?

A. Yes.

Q. What time does it come on?

A. 1:00.

MR. WATSON: No further questions.

THE COURT: Mr. Willis?

MR. WILLIS: No questions.

THE COURT: Mr. Mack?

MR. MACK: No questions.

THE COURT: Your next witness, Mr. Mack.

MR. MACK: May I have just one moment?

THE COURT: Sure.

MR. MACK: Call Ru-el Sailor.

- - - - -

(The DEFENDANT RU-EL SAILOR, to further maintain the issues on his part to be maintained, called as a witness, RU-EL SAILOR, who, being first duly sworn, was examined and testified as follows:)

THE COURT: Be careful. There are two steps, sir.

- - - - -

DIRECT EXAMINATION OF RU-EL SAILOR

BY MR. MACK:

Q. Would you state your name for the record and spell your last name, please.

A. My name is Ru-el Sailor. S-a-i-l-o-r.

Q. Mr. Sailor, where were you living on or about November 16th of the year 2002?

A. My mother's house on East 150th.

Q. Okay. Who were you living there with?

A. My mother, my brother, me, my fiancée and my kids.

Q. Now, Mr. Sailor, let's get down to it. Have you ever pled guilty or been convicted of a state or federal offense?

A. Yes, sir.

Q. Please tell the jurors what that is.

A. It was a drug conviction in '98. I was sentenced to two years probation which I completed.

Q. Just tell them what you were convicted of.

A. Drug possession.

Q. Anything else?

A. No. Drug trafficking, yeah.

Q. Now, November the 16th, do you recall that day?

A. Yes.

Q. Do you recall what, if any, time did you get up on that early morning?

1 A. I got up at like 7 'cuz my fiancée and everybody
2 was leaving. I had to keep the kids that day so I was up
3 the rest of the day.

4 Q. Now, at some point in time did your family return
5 home?

6 A. Yes.

7 Q. Do you recall approximately what time that was?

8 A. It was after 7:00 because I was mad at her because
9 I couldn't get my clothes from the cleaners.

10 Q. Did there come a point in time when you left the
11 house that night?

12 A. Yes.

13 Q. Do you recall how you were dressed?

14 A. Yes.

15 Q. How were you dressed?

16 A. I had on my Nets jersey, light blue aqua jeans, and
17 light gray Timberland boots that I had on the day before.

18 Q. Where, if anyplace, had you intended to go?

19 A. I was supposed to go pick up Cordell but he said
20 that he already had a ride, so I went to Benjamin's.

21 Q. Benjamin's?

22 A. Yes.

23 Q. How did you get there?

24 A. I drove.

25 Q. What kind of vehicle did you drive?

1 A. 2000 focus.

2 Q. Now, when you left did you take anything with you
3 from the house?

4 A. No, just my jacket.

5 Q. Did you take a weapon?

6 A. No.

7 Q. Now did you, in fact, arrive at The Benjamin?

8 A. Yes.

9 Q. Approximately what time was it that you arrived?

10 A. Probably about 11.

11 Q. 11:00?

12 A. Yeah.

13 Q. Now, when you arrived there did you see anybody
14 that you knew?

15 A. No. Just the bartender, people like that.

16 Q. Now, do you know Samuel Brown?

17 A. Yes.

18 Q. Do you know whether or not he arrived at Benjamin's
19 that particular night?

20 A. Yes, he did.

21 Q. Were you there first?

22 A. Yes.

23 Q. He arrived, correct?

24 A. Yes.

25 Q. Do you have any idea approximately what time he

1 arrived?

2 A. I really -- had to be like 11:30. I was there
3 about 11:30.

4 Q. Did there come a particular time -- Strike that.
5 What, if anything, did you do while at Benjamin's?

6 A. I'm addicted to the little games you put your
7 quarters in so I was already over there spending all my
8 money on the game, and drinking, socializing.

9 Q. Now, did you see Samuel Brown while in that bar?

10 A. Yes.

11 Q. What, if anything, was he doing?

12 A. He came in, sat down next to me.

13 Q. Okay. Where were the two of you sitting in The
14 Benjamin bar?

15 A. At the end when you walk in, the D.J. booth by the
16 bathroom, there is a stool with the game and the D.J.
17 booth. Samuel was sitting next to me.

18 Q. Did you participate in any of the activities other
19 than the games?

20 A. Yeah. Later on that night Cordell think he a
21 rapper so D.J. gave him the microphone so everybody
22 started rappin'.

23 Q. Cordell arrived there at the bar sometime that
24 night?

25 A. He came after Samuel.

1 Q. Do you have any idea approximately what time that
2 he arrived?

3 A. Probably like 15, 20 minutes after Samuel.

4 Q. Now, during the time that you were there that
5 night do you know what Samuel was doing the whole time?

6 A. Regular socializing.

7 Q. What does that mean?

8 A. Talking, laughing, whatever. Drinking.

9 Q. Did you sit in one position all the time?

10 A. No.

11 Q. What, if anything, did you do?

12 A. I mean, like the music loud so somebody phone
13 ring, you go back and forth to the bathroom, or you go
14 step outside in front of the bar outside. We just be
15 walkin' around talkin' to people, you know.

16 Q. Were you all together at that particular time
17 sitting at the bar?

18 A. Yeah. The bar ain't bigger than this courtroom.
19 We was all, you know what I'm sayin', where we could see
20 each other or something.

21 Q. Did there come a particular time when you decided
22 to leave the bar?

23 A. We all had agreed we was going to the party at the
24 4U2B bar at Euclid and they don't let nobody in after
25 1:30. We agreed we was going to leave Benjamin's prior to

1 1:00 so we could get there and get in.

2 Q. Do you have any idea approximately what time you
3 left?

4 A. Between like 12:40 and 1.

5 Q. 12:40 and 1?

6 A. Yeah.

7 Q. When you left what were you driving, or how did
8 you get to the next place?

9 A. Focus that I left my house in.

10 Q. You were driving?

11 A. Yes.

12 Q. Was anyone riding with you?

13 A. Yes, Cordell.

14 Q. Now, this was at 12:40?

15 A. Yes.

16 Q. Are you sure that you did not leave at 12:00?

17 A. Positive.

18 Q. Are you sure that you didn't leave at 12:15?

19 A. I'm positive.

20 Q. How do you know it was 12:40 or after when you
21 left?

22 A. 'Cuz I wasn't trying to get there until 1:00.

23 Q. During the time that you were traveling what course
24 of travel would you have taken in order to get to the 4U2B
25 bar?

1 A. Well, I came down 150th, I had to go by mother's
2 house, make sure everything is okay, go over 152nd exit,
3 go onto the freeway, exit on 260.

4 Q. How are you familiar with Englewood?

5 A. My uncle lived on Columbia and he just moved on
6 Grantwood so I been familiar with that area for a minute.

7 Q. On November 16th or November 17th did you, in
8 fact, travel down to Englewood Avenue?

9 A. No. I ain't -- To be honest, my whole day consist
10 of 150th, and Benjamin's, and Euclid. And then later that
11 night went to a little party at St. Aloysius.

12 Q. Do you know a person by the name of Omar Clark?

13 A. No.

14 Q. Do you know a person either named Clark Williams or
15 Clark Lamar or a person named Dude?

16 A. No, sir.

17 Q. Let me back up. You said that you did not know
18 Omar?

19 A. No.

20 Q. Do you know whether or not Omar has a child or not?

21 A. No.

22 Q. You were not on Englewood that night and said, This
23 is family. Omar is your cousin's baby's father?

24 A. No, sir.

25 Q. You have a cousin?

1 A. Me?

2 Q. Yes.

3 A. Yes, yes.

4 Q. Do you know who the father of their babies are?

5 A. Yes.

6 Q. Is Omar one of those persons?

7 A. No.

8 Q. Now, showing you what has been marked as
9 Defendant's Exhibit M, would you please take a look at
10 this. Again, for the record, please indicate what it is
11 that I am handing you.

12 A. Picture we took at St. Aloysius.

13 Q. Let's go back. You say at St. Aloysius?

14 A. Yes.

15 Q. Okay. That was not taken at The Benjamin, was it?

16 A. No.

17 Q. Wasn't taken at the 4U2B?

18 A. No.

19 Q. You went to another place that night?

20 A. Yes.

21 Q. Who went with you to that other place that night?

22 A. Cordell because his cousin had called us and told
23 us --

24 MR. THOMAS: Objection.

25 THE COURT: Objection is sustained.

1 Q. Okay. You went to a third place that particular
2 night?

3 A. Yes.

4 Q. Now, I'll show you what has been marked for
5 purposes of identification as Defendant's Exhibit N. Will
6 you please take a look at this and, for the record, please
7 indicate what it is that I have handed you.

8 A. A picture again from the same place.

9 Q. Can you describe in that particular photograph
10 what, if anything, that you are wearing?

11 A. Light blue jeans, gray New Jersey Nets jersey with
12 the headband to match, it is New Jersey Nets, and black
13 leather coat.

14 Q. Describe what that coat looks like.

15 A. It is a Phat Farm -- It have a flag with a P and
16 got patches on the sleeve.

17 Q. You say it is a big flag?

18 A. Yeah. Take up the whole back of the coat.

19 Q. What time did you return on that particular night
20 or early morning?

21 A. Home?

22 Q. Yes.

23 A. About 4, 4:30 probably.

24 Q. Showing you Defendant's Exhibit O, would you please
25 take a look at this for me. Again, for the record, would

1 you please describe what it is that I have handed you.

2 A. Picture from the same spot we was at.

3 Q. Are you holding your hands in any direction?

4 A. No. I was intoxicated.

5 Q. You mean this, (indicating), means nothing?

6 A. No, no.

7 Q. Again, I hand you what has been marked as State's
8 Exhibit 7. Would you please take a look at this. For the
9 record, what is it that I have handed you?

10 A. A picture of somebody.

11 Q. Have you ever seen that particular person before?

12 A. No, sir.

13 Q. Did you see that particular person on November the
14 16th?

15 A. No, sir.

16 Q. Did you see this particular person on November the
17 17th?

18 A. No, sir.

19 Q. Are you involved in any gang?

20 A. No, sir.

21 MR. MACK: One moment, your Honor, please.

22 Q. This incident that took place when you were in a
23 hospital in December, do you recall when that was?

24 A. Yes.

25 Q. When was that, sir?

1 A. In December. My mother's birthday. The day of her
2 birthday.

3 Q. December what?

4 A. 17th.

5 Q. What happened to you?

6 A. I approached a male about breakin' in my car and we
7 was fightin'. He assaulted me with a brick like several
8 times to my face.

9 Q. Did you receive any damage to your face?

10 A. Yes.

11 Q. What damage did you receive?

12 A. I had to get surgery on my eye. I had to get
13 stitches inside my eye and staples right here,
14 (indicating), and a couple stitches on my forehead and
15 stuff.

16 Q. Do you know who did that to you?

17 A. Yes, sir.

18 Q. Did you go out and retaliate against that person?

19 A. No, sir. I left it in God's hands.

20 Q. Did you shoot somebody on the morning of
21 either -- Strike that. Did you shoot anybody November the
22 16th or November the 17th?

23 A. No, sir. I wouldn't shoot nobody for myself so I
24 ain't shootin' for nobody else.

25 MR. MACK: Thank you. No further

1 questions.

2 THE COURT: Mr. Thomas?

3 MR. THOMAS: Thank you.

4 - - - - -

5 CROSS-EXAMINATION OF RU-EL SAILOR

6 BY MR. THOMAS:

7 Q. Your car got broken into in December?

8 A. Yes.

9 Q. Which car?

10 A. I had a Monte Carlo.

11 Q. What color?

12 A. Blue.

13 Q. Blue. What became of that Monte Carlo?

14 A. I sold it.

15 Q. Who did you sell it to?

16 A. Guy in the neighborhood.

17 Q. What is his name?

18 A. They call him Ray-Ray. Just a guy I know from the
19 neighborhood. He was asking to buy it so I sold it.

20 Q. What year Monte Carlo?

21 A. '85 SS.

22 Q. How much did you get for it?

23 A. How much did I get for it? 2,000.

24 Q. Did you title the car to him?

25 A. Huh?

1 Q. Did you sign over the title?

2 A. Yes.

3 Q. What was the person's name?

4 A. Ray-Ray.

5 Q. Ray-Ray what?

6 A. I don't know his last name.

7 Q. You sold a car and transferred --

8 A. He put it in his people's name, in his name.

9 Q. Is that common?

10 A. Yes.

11 Q. Why?

12 A. You got to have a driver's license to put a title
13 in your name.

14 Q. Do you have a license?

15 A. Not currently I don't. They suspended it.

16 Q. How long has it been suspended?

17 A. Like about since probably like 2001.

18 Q. How did it get suspended?

19 A. Plenty of traffic tickets, man.

20 Q. Where?

21 A. Cleveland.

22 Q. Driving what vehicle?

23 A. All kind of vehicles.

24 Q. How many?

25 A. Like my family vehicles, or one of my vehicles that

1 I had.

2 Q. Can you describe some of these vehicles for us?

3 A. My mother got a Geo Prism, Monte Carlo. I had a
4 Bonneville, turquoise Bonneville.

5 Q. The Monte Carlo, how much did you pay for it when
6 you bought it?

7 A. I think like probably about 2,000, somewhere in
8 there.

9 Q. When did you buy it?

10 A. I bought it in like -- I bought it in 2001.

11 Q. Who did you buy it from?

12 A. A guy in the neighborhood.

13 Q. What was that guy's name?

14 A. Toe. Guy name Toe.

15 Q. Toe, like a toe on your foot?

16 A. Yeah.

17 Q. Does Toe have a full name?

18 A. His real name is Torrie. I don't know his last
19 name. Just call him Toe.

20 Q. Did you title that car in your name?

21 A. No, not at the time I didn't.

22 Q. Why not?

23 A. I put it in my fiancée's name.

24 Q. But you paid for it?

25 A. Yes.

1 Q. Why did you put it in her name?

2 A. 'Cuz my license was suspended at that time.

3 Q. Have you continued to drive while you were
4 suspended?

5 A. No. I got my license reinstated, then they
6 suspended them again.

7 Q. Have you ever driven while under suspension?

8 A. Yes.

9 Q. How many times?

10 A. Plenty.

11 Q. Why do you do that?

12 MR. MACK: Objection, your Honor.'

13 THE COURT: Objection is sustained.

14 Q. Who's Monica Williams?

15 A. A girl that I used to mess with like in 2001 once.
16 Mess with her once or twice.

17 Q. What do you mean, Mess with?

18 A. I had sex with her.

19 Q. Does your fiancée know about Monica?

20 A. Now she do.

21 Q. Have you messed with any women since you have been
22 seeing your fiancée?

23 MR. MACK: I object.

24 THE COURT: Overruled.

25 A. What that got anything to do with this case?

1 Q. I'm asking you a question, sir. Have you messed
2 with other women while you been with this woman?

3 A. I can't recall.

4 Q. You can't recall. Now, Mr. Mack asked you if you
5 carried a gun that night, if you took a gun with you. Do
6 you remember your answer?

7 A. Yes.

8 Q. What was your answer?

9 A. No.

10 Q. Have you ever carried a gun?

11 MR. MACK: Objection, your Honor.

12 THE COURT: The objection is overruled.

13 A. Yes.

14 Q. When?

15 THE COURT: Now the objection is sustained.

16 Q. Why did you carry a gun?

17 MR. MACK: Objection, your Honor.

18 THE COURT: Sustained.

19 Q. Now, your trafficking cases, was one of those in
20 Lake County?

21 A. Yes. That was recent.

22 Q. Painesville?

23 A. Yes.

24 Q. So you sell drugs between Painesville and
25 Cleveland?

1 A. No, sir.

2 Q. You got busted by the Lake County Narcotics Unit in
3 Painesville?

4 A. Yes.

5 Q. Mr. Mack and you pled guilty to that offense there?

6 A. Yes, sir. I was set up, sir.

7 Q. Your earlier drug possession in '98, was Mr. Mack
8 your attorney then?

9 A. Yes, sir.

10 Q. Have you ever been violated on probation?

11 A. No, sir.

12 Q. Never?

13 A. No.

14 MR. THOMAS: May I stand next to the
15 witness?

16 THE COURT: You may.

17 Q. Let's start up here, (indicating).

18 MR. MACK: Objection.

19 THE COURT: Objection is sustained. The
20 objection is sustained. He will ask you another
21 question.

22 Q. Would you review this document?

23 MR. MACK: Still same objection, your
24 Honor.

25 THE COURT: Overruled.

1 A. Yes sir, I reviewed it.

2 Q. Does that refresh your recollection at all?

3 A. Yes.

4 Q. What does it refresh?

5 MR. MACK: Still objection.

6 THE COURT: Objection is sustained.

7 Q. I've got the right sheet here, don't I?

8 A. Yes.

9 Q. Have you ever been to state prison?

10 A. No, sir.

11 Q. Ever carry a cell phone?

12 A. Yes, sir.

13 Q. For how long?

14 A. Probably since like '98. 1998, probably.

15 Q. Has it been one number throughout?

16 A. No, sir.

17 Q. Did you have a cell phone account in November of
18 2002?

19 A. No, sir.

20 Q. What is Cordell's cell phone number?

21 A. 513-7870.

22 Q. What is Sam Brown's number?

23 A. 598-1196.

24 Q. Do you know Nichole Hubbard?

25 A. No. I just recently met her like last year.

1 Q. Have you ever had occasion to talk with her on the
2 phone?

3 A. No, sir.

4 Q. Do you know Maria Whitlow?

5 A. No, sir.

6 Q. Do you know Ellen Taylor?

7 A. No, sir.

8 Q. Did you see Nichole in court here today?

9 A. Yes, sir.

10 Q. Point to her and describe what she is wearing.

11 A. Right there, (indicating), with the brown shirt
12 with white collar.

13 MR. THOMAS: Would the record reflect the
14 identification of Defendant Nichole Hubbard?

15 THE COURT: Record will so reflect.

16 A. Her last name Hubbard.

17 Q. Do you see Cordell?

18 A. Yes.

19 Q. Point to him and describe what he is wearing.

20 A. Right there, (indicating). Light-skinned guy with
21 the white shirt and tie.

22 MR. THOMAS: Would the record reflect the
23 identification of the Defendant?

24 THE COURT: Record will so reflect.

25 Q. Do you know them to be brother and sister?

1 A. Yes.

2 Q. How long have you known that?

3 A. That, or Cordell?

4 Q. Known --

5 A. I known he had a sister since I know him.

6 Q. Did he ever introduce you to Nichole?

7 A. Just last year.

8 Q. What did he say when he introduced you?

9 A. This is his sister. His father's daughter.

10 Q. Do you know anything about Cordell's temper?

11 MR. WATSON: Your Honor, may we approach?

12 THE COURT: You may.

13 - - - - -

14 (Thereupon, a discussion was had
15 between Court and counsel outside
16 the hearing of the jury and off the
17 record.)

18 - - - - -

19 (Thereupon, the following proceedings
20 were had in open court:)

21 MR. THOMAS: I will withdraw my last
22 question.

23 BY MR. THOMAS:

24 Q. Does Cordell have a temper?

25 A. No, not that I know of.

1 Q. Not that you have ever seen?

2 A. No.

3 Q. Now, you were driving the Ford focus that night?

4 A. Yes.

5 Q. White Ford focus?

6 A. Yes, sir.

7 Q. How many doors?

8 A. Four doors.

9 Q. When you left Benjamin's you drove by yourself?

10 A. No, sir.

11 Q. Who drove with you?

12 A. Cordell.

13 Q. Okay. What happened to Sam?

14 A. Sam drove his own car, say he meet us there.

15 Q. What car did he have?

16 A. Taurus.

17 Q. What color?

18 A. White.

19 Q. White Taurus?

20 A. Yes, sir.

21 Q. Now, when you were together at Benjamin's were you
22 all together for the entire time that you were inside
23 Benjamin's?

24 A. Yes.

25 Q. So nobody left to go anywhere?

1 A. No, not that I am aware of. No.

2 Q. How long was Cordell up on stage during the
3 rap-time fest?

4 A. No stage. Just in the aisleway or whatever.

5 Q. How long did he have the mike? How long was he
6 performing?

7 A. Two of them, they was battling back and forth
8 probably like 30, 40 minutes long.

9 Q. What time do you believe that began?

10 A. I would say like 12. Around 12.

11 Q. Went on for about 40 minutes?

12 A. Yes, sir.

13 Q. So during the time Cordell is holding a microphone?

14 A. Yes, back and forth.

15 Q. I've never seen one of these performances. If I
16 understand what your testimony is, it was Cordell and
17 another person competing against each other?

18 A. Yes.

19 Q. So they pass the mike back and forth?

20 A. Yes.

21 Q. Sort of like American Idol; one sings a song, and
22 then the next?

23 A. Yeah, something like that.

24 Q. While the person that Cordell is competing with is
25 performing, Cordell is standing there watching?

1 A. Yeah.

2 Q. Is this free-form rap?

3 A. What you mean free form?

4 Q. Just thinking it up as they go.

5 A. Yeah. He really believes that he a rapper, so.

6 Q. It's not memorized rap, right?

7 A. No.

8 Q. They are not doing well-known or published rap
9 songs?

10 A. No.

11 Q. Just doing free-form rap?

12 A. Yes.

13 Q. When you are doing free-form rap you have to be
14 thinking about what happens that you want to respond with,
15 right --

16 A. Pretty much.

17 Q. -- to the rappers?

18 A. I don't think I'm a rapper so I can't answer that.

19 Q. I understand. But you have watched the
20 performance?

21 A. Yeah.

22 Q. The rappers, when they are performing, do they ever
23 design the lyrics or phrases to throw something verbally,
24 so to speak, back at the person they are competing
25 against?

1 A. Probably so.

2 Q. Either taunts or, I'm a better rapper than you
3 and here is why, that sort of thing?

4 A. Yeah, yeah. That is the whole thing about what
5 it is all about, competition.

6 Q. Competition. My point is while competing, if you
7 are going to be a good competitor, your mind has to be on
8 the rap contest, right?

9 A. Not that you win or nothing. You in the bar and
10 knowin' you with your friends.

11 Q. I'm referring to Cordell. Cordell is competing,
12 right?

13 A. No, not really.

14 Q. Not really?

15 A. The other guy wouldn't rap anyway so he really
16 wasn't putting much effort into it.

17 Q. He is watching the other guy while he has the mike?

18 A. Yeah.

19 Q. Cordell is not making any cell phone calls, right?

20 A. Probably so. If his phone ring, or he got to call
21 somebody he gonna do it.

22 Q. Did you see any --

23 A. In the bar the music loud so we usually go to the
24 bathroom to use the phone or outside in front of the bar
25 to use the phone.

1 Q. Well, did you ever see Cordell go to the bathroom
2 to use his phone?

3 A. I don't recall.

4 Q. Did you ever see Cordell go outside with his phone?

5 A. Probably so.

6 Q. How many times?

7 A. I'm not sure. I didn't think that was something
8 that I have to remember.

9 Q. Did you hear his phone ring at any time?

10 A. I was in the bar.

11 Q. Okay. You said it's no bigger than this courtroom,
12 right?

13 A. Loud music.

14 Q. Is it smaller than the courtroom?

15 A. Yeah.

16 Q. How much smaller?

17 A. Like probably just half this courtroom.

18 Q. So it is the long shoe box type of bar?

19 A. Yes.

20 Q. The bar runs down the length of the space?

21 A. Stools. You got another bar on this side,
22 (indicating), you sit at stools, there is a walkway.

23 Q. Typical storefront?

24 A. Hole-in-the-wall bar.

25 Q. That is what I was thinking about. How many

1 bartenders were there that night?

2 A. One.

3 Q. One. Do you know that bartender?

4 A. Yes.

5 Q. Male or female?

6 A. Male -- Female. Female.

7 Q. Name?

8 A. Charise. She light skinned.

9 Q. How long have you known her?

10 A. Some months now. I frequently go in there.

11 Q. Back in November, how well did you know Charise?

12 A. I been going there. Previous I know her, she know
13 me as El, I know her as Charise. She know I come in the
14 bar.

15 Q. Do you know if she knew Cordell or not?

16 A. Yes.

17 Q. How do you know?

18 A. We come in the bar frequently together.

19 Q. When you buy drinks do you tip?

20 A. Yes.

21 Q. Why do you tip?

22 A. 'Cuz I want to get a fatter drink next time.

23 Q. When it is a crowd you put up your hand?

24 A. I know when she workin', you know what I'm sayin'.

25 Q. You try to build up goodwill so when you raise your

1 hand and say, I need a round she will recognize you?

2 A. Yes.

3 Q. Was she bartending Saturday night, November 16th?

4 A. Yes.

5 Q. Do you recall what she was wearing?

6 A. No.

7 Q. She was working by herself?

8 A. Yes.

9 Q. Do you know the owner of the bar?

10 A. Yes.

11 Q. What is the owner's name?

12 A. Dawn.

13 Q. Dawn what?

14 A. I forgot her last name.

15 Q. Gulsby?

16 A. Yes.

17 Q. Was she there that night?

18 A. Yes.

19 Q. How do you know Dawn?

20 A. I come in her bar frequently.

21 Q. Did you ever talk to her?

22 A. Yes.

23 Q. Did you talk to her that night?

24 A. Yes. Probably most likely, yes.

25 Q. When the two of you left Benjamin's you say that

1 you left together, you and Cordell?

2 A. Yes.

3 Q. Benjamin's is where again?

4 A. East 152nd.

5 Q. And what generally?

6 A. St. Clair.

7 Q. 152nd and St. Clair?

8 A. Yes.

9 Q. For you to be as further out as 260th --

10 A. Euclid.

11 Q. Where is St. Aloysius?

12 A. East 109th, if I am not mistaken. Yeah, East
13 109th and St. Clair.

14 Q. What was this cabaret at St. Aloysius about or for?

15 A. I'm not even sure. I was -- We was invited from
16 the 4U2B. They say it jumpin' at St. Aloysius so we went.

17 Q. Is this a party outside in a parking lot, or inside
18 the church hall?

19 A. It's November. It's inside the church hall.

20 Q. Main floor, or basement?

21 A. Main -- Main floor.

22 Q. How big was that party at St. Aloysius?

23 A. It was kind of crowded. It was crowded.

24 Q. Now that church hall, is that bigger than this
25 courtroom?

1 A. Yes.

2 Q. When you got to St. Aloysius was Cordell with you?

3 A. Yes.

4 Q. So when you leave Benjamin's the two of you are
5 together?

6 A. Yes.

7 Q. When you go to the 4U2B you're together?

8 A. Yes.

9 Q. Then you leave 4U2B and go to St. Aloysius
10 together?

11 A. Yes.

12 Q. So you are in each other's company throughout that
13 entire set of events?

14 A. Yes.

15 Q. How far is St. Aloysius from Englewood?

16 A. Not far.

17 Q. Can you describe?

18 A. Take me not five minutes.

19 Q. 109th and St. Clair and talking 105th north of?

20 A. It's back streets to get there quicker.

21 Q. What back streets or routes that are quicker?

22 A. I can't name them by name, but a couple back
23 streets to get you to Parkwood.

24 Q. How would that route work? Can you describe it the
25 best that you know?

1 A. No. I have to be drivin'.

2 Q. You been that way before down those back streets?

3 A. Yes. My uncle stays on 105th.

4 Q. What time did you arrive at St. Aloysius?

5 A. It was like after 2. They weren't serving no more
6 drinks.

7 Q. Did I hear your testimony to be that you drove
8 direct to St. Aloysius?

9 A. Yes.

10 Q. No stops in between?

11 A. No, not that I can recall none.

12 Q. During the ride from 4U2B to St. Aloysius was
13 Cordell's phone ringing?

14 A. I mean, probably so. I can't recall if somebody
15 phone ring. Phones supposed to ring.

16 Q. I understand. You're driving?

17 A. I'm drivin', radio up. We just left one bar going
18 to another bar.

19 Q. You arrive at St. Aloysius 2:00 or later?

20 A. Yes.

21 Q. Because the alcohol was cut off?

22 A. Yes.

23 Q. How long did you stay?

24 A. Probably like 30, 40 minutes 'cuz I was ready to
25 drink but you couldn't drink. I was ready to leave after

1 about 40 minutes. Took some pictures and left.

2 Q. Why did you take those pictures?

3 A. 'Cuz we supposed to take some at the 4U2B but the
4 line was too long. I like takin' pictures.

5 Q. Fair enough. Did Sam come to St. Aloysius?

6 A. No, sir.

7 Q. Do you know Yolanda Moore?

8 A. No, sir.

9 Q. Do you know Shante Wilkins?

10 A. Who?

11 Q. Shante Wilkins.

12 A. No, sir.

13 Q. During that night did Nichole Hubbard's name come
14 up in conversation between Cordell and you?

15 A. No.

16 Q. Did you ever hear him say that Nichole called, or
17 anything of that sort?

18 A. No, sir,

19 Q. How loud is the bar while the rap contest is going
20 on?

21 A. How loud was it? I mean, loud music like in a bar.
22 I don't know the kind of bars you go to, but the bars that
23 I go to the music be loud.

24 Q. Would you have to put your mouth to a person's ear
25 to be heard if you are having conversation?

1 A. No -- If I am sittin' talkin' to her,
2 (indicating), she probably hear me.

3 Q. Would you have to raise your voice?

4 A. Little bit maybe.

5 Q. You got rid of the Monte Carlo when?

6 A. 2002.

7 Q. What month?

8 A. Like January, like February. Probably like
9 January, February.

10 Q. Okay. Do you mean 2003?

11 A. This 2003. No.

12 Q. Way before this incident, or after this incident?

13 A. The incident occurred in 2001.

14 Q. The car got broken into in December of 2002?

15 A. It was in December 2001.

16 Q. That you got rid of the Monte Carlo?

17 A. Yes -- No. The incident about me in the hospital
18 and the car getting broken into occurred in 2001.

19 Q. Not 2002 like we heard before?

20 A. No, it's 2001.

21 Q. Whose car is the white focus?

22 A. Friend of mine, associate. Her name Toni.

23 Q. Is that a female?

24 A. Yes.

25 Q. What is her last name?

1 A. I can't recall. It's funny. Like funny last name.

2 Q. Where does she live?

3 A. Out in Euclid.

4 Q. Off Euclid where?

5 A. On 200th.

6 Q. And what?

7 A. Euclid.

8 Q. 200th Street itself?

9 A. Yes.

10 Q. She lives there?

11 A. Yes.

12 Q. What does the house look like?

13 A. It's an apartment.

14 Q. She didn't need her car?

15 A. No. She don't work on weekends.

16 Q. How long had you been borrowing her white Contour?

17 A. Two weeks off and on. I ain't have no vehicle at
18 the time, so she would let me use it to take my daughter
19 to school.

20 Q. You have been sitting through this trial, right?

21 A. Yes.

22 Q. You have heard the description of the
23 eyewitnesses --

24 A. Yes.

25 Q. -- that people left in a car, right?

1 A. Yes.

2 Q. You're telling this Court and jury that you were in
3 a white car that you had borrowed from Toni that night,
4 right?

5 A. Yes.

6 Q. Is Toni going to testify to corroborate that?

7 MR. MACK: Objection, your Honor.

8 THE COURT: Overruled.

9 A. Huh?

10 Q. Is Toni going to come in and say, Yes, I lent my
11 car to Ru-el?

12 A. I mean, if she have to.

13 Q. What was the capacity of Benjamin's in terms of
14 general numbers? How many people would you say were
15 there?

16 A. I'm not sure. I can't really recall.

17 Q. More than 5?

18 A. Yes.

19 Q. More than 10?

20 A. Yes.

21 Q. More than 15?

22 A. Probably like 20. 20 people. It was getting ready
23 to start gettin' crowded. About 12, 12:30 people start
24 coming in.

25 Q. When you got to the 4U2B how big is that bar?

1 A. Big bar.

2 Q. How many people would you estimate were there that
3 night?

4 A. Full house.

5 Q. More than 50?

6 A. Yeah.

7 Q. More than a hundred?

8 A. No.

9 Q. Any friends there?

10 A. Couple people.

11 Q. Names?

12 A. I'm not sure. I can't really recall everybody that
13 I seen because I seen them on a normal weekend basis at
14 the same bars.

15 Q. Do you know any bartenders at the 4U2B?

16 A. No.

17 Q. Do you know any doormen at either bar?

18 A. At either bar?

19 Q. Are there doormen?

20 A. At The Benjamin?

21 Q. Yes.

22 A. Yes.

23 Q. Do you know the doorman there?

24 A. Yeah, security guard named Sport.

25 Q. How long have you known Sport?

1 A. Some months. Since I been going to The Benjamin.

2 Q. So you knew him back then?

3 A. Yes.

4 Q. He knew you?

5 A. Yes.

6 Q. Just like the bartender?

7 A. Yes.

8 Q. Just like the owner Dawn?

9 A. Yes. D.J.

10 Q. Who is the D.J.?

11 A. I don't know his real name. He call himself D.J.

12 Sweet Daddy.

13 Q. Have you ever talked or had fun with him?

14 A. Yes.

15 Q. How often?

16 A. As often as I go in there.

17 Q. You know him as Sweet Daddy?

18 A. Yes.

19 Q. Now, your fiancée testified that you came home as
20 the sun was coming up Sunday morning?

21 A. Yep.

22 Q. Where were you after the bars?

23 A. Ridin' around.

24 Q. With who?

25 A. Cordell for a minute.

1 Q. How long? For a minute?

2 A. Yes.

3 Q. How long did that go on?

4 A. Probably about 30, 40 minutes, an hour or so.

5 Q. How did Cordell get home?

6 A. I took him home.

7 Q. Where did you take him home to?

8 A. His mother's house.

9 Q. Where would that be?

10 A. East 147th.

11 Q. And what?

12 A. St. Clair.

13 Q. After you dropped him off where did you go?

14 A. I went home.

15 Q. What time was that?

16 A. Probably like about 4:00; going to 4:00 probably.

17 Q. Well, you were at St. Aloysius from 2 for about
18 how long?

19 A. About 40 minutes.

20 Q. You leave somewhere between 2:40, 2:50?

21 A. Yeah. In the parking lot talking to some females
22 or whatever, you know.

23 Q. Which females?

24 A. Just some females.

25 Q. Have any names for them?

1 A. No.

2 Q. Do you have any other children besides these three?

3 A. No, sir. My fiancée has an older daughter.

4 She's --

5 Q. I'm talking with other women.

6 A. No, sir.

7 Q. Or girls?

8 A. No, sir.

9 Q. So you leave St. Aloysius somewhere around 2:40,
10 2:50?

11 A. Yes, sir.

12 Q. You and Cordell are together?

13 A. Yes.

14 Q. Do you make any stops for any late night food,
15 anything like that?

16 A. I really can't recall. I don't think so, though.

17 Q. Do you go straight from Aloyosius to Cordell's
18 mom's house?

19 A. We rode around for a minute.

20 Q. I'm having a hard time understanding what a minute
21 means.

22 A. I mean, I'm not sure exactly how long or how
23 accurate 'cuz I'm not sure.

24 Q. Do you recall any phone conversations Cordell was
25 having at that point?

1 A. I mean, I don't monitor his phone conversations.

2 Q. Was he talking on the phone?

3 A. Yeah. We just left bars so he was probably tryin'
4 to find himself something to get into.

5 Q. Like what do you mean?

6 A. A girl house he gonna go over.

7 Q. Do you know if he talked to Leshawn McCreary?

8 A. He probably did.

9 Q. Do you know if he hooked up with her that night?

10 A. I'm not sure.

11 Q. Did he talk to other girls that night?

12 A. Yeah. He single, so he knows a lot of girls.

13 Q. Just like you, right?

14 A. What?

15 Q. Single just like you?

16 A. I ain't single.

17 Q. Fair statement the two --

18 A. Is this divorce court or what? Tell me something I
19 don't know.

20 Q. No. It's your murder trial, okay? The two of you
21 that night at the bars and Aloyosius talked to females,
22 right?

23 A. Yes.

24 Q. Fair to say both of you were playing the field that
25 night in terms of single females?

1 A. No.

2 Q. Why not?

3 A. 'Cuz I got a fiancée at home with my children.

4 Q. Because you're a good, responsible person you were
5 home early that night, right?

6 A. I was home early?

7 Q. Yes.

8 A. No, I wouldn't say that I was home early.

9 Q. How do you support those three children?

10 A. Work for my grandmother from time to time.

11 Q. How often is that?

12 A. Like every week, every two weeks. She pay me a
13 little something to clean her day care up, take the
14 garbage out.

15 Q. How much does she pay you?

16 A. Like 250 every two weeks. She know I'm going to
17 school.

18 Q. \$250?

19 A. Yes.

20 Q. For taking out the garbage?

21 A. I do odd jobs around there.

22 Q. How old is Grandma?

23 MR. MACK: Your Honor, I object.

24 THE COURT: Overruled.

25 A. She about 58.

1 Q. All right.

2 A. 56. Something like that.

3 Q. Is she retired?

4 A. Is she retired?

5 Q. Yes.

6 A. No.

7 Q. Does she work?

8 A. She runs a day care.

9 Q. Is she married?

10 A. Yes, sir.

11 Q. To whom?

12 A. My grandfather.

13 Q. What is his name?

14 A. James Brown.

15 Q. What is Grandma's name?

16 A. Juanita Brown.

17 Q. What is the name of the day care?

18 A. Juanita Brown Day Care Provider.

19 Q. Is there a sign, or anything public at this

20 location?

21 A. No.

22 Q. Do you know if it is --

23 A. It is through her house. Her whole house, you know

24 what I'm sayin', top to bottom.

25 Q. Is it registered with the city?

1 A. Through the county.

2 Q. Through the county. Okay. Every two weeks she
3 pays you \$250 bucks?

4 A. Yes.

5 Q. You use that to supplement the drug money?

6 MR. MACK: Objection, your Honor.

7 THE COURT: Objection is sustained. Please
8 disregard the question.

9 Q. Now, you've said in your earlier testimony there is
10 no question that these photos, Defendant's Exhibits M, N
11 and O are yourself and Cordell, right?

12 A. Yes, sir.

13 Q. You are both wearing red headbands?

14 A. Yes sir, we are.

15 Q. You are both wearing sport jerseys of different
16 colors and styles, but both sports jerseys?

17 A. Yes.

18 Q. Cordell has silver satiny jogging pants?

19 A. Not jogging pants, they jeans.

20 Q. What are they, black with a bleached-out white
21 front?

22 A. Yes, sir.

23 Q. There are two different colors on those pants?

24 A. The back of them is white, like the front of them.
25 Just the side is black.

1 Q. But it looks like the majority of the front of the
2 leg is white, then black on the side, and the back is
3 white?

4 A. Yes.

5 Q. Depending on which way the person is standing it
6 looks different?

7 MR. MACK: Objection.

8 THE COURT: Overruled.

9 A. You can see regardless.

10 Q. If the person is standing sideways, you will see
11 black?

12 A. You will see white regardless.

13 Q. Your leather jacket, do we have that here?

14 A. No.

15 Q. Nobody thought to bring that?

16 A. I mean, somebody can go get it for you real quick.

17 Q. Okay. You still own it, right?

18 A. Yes, sir. Only one that I got.

19 Q. But it's not here. It's not here, is it?

20 A. No, it's not here.

21 Q. Why were you both wearing the red headbands that
22 night?

23 A. I mean, if you look at the picture, it match our
24 outfit. Mine is a New Jersey Nets headband if you look at
25 the picture, but it match the jersey.

1 Q. The red also matches Cordell's red 42 jersey?

2 A. Red in his shoes coordinating.

3 Q. A team jersey?

4 A. Not a team jersey, it's Urban Gear jersey.

5 Q. It is not meant to reflect football or basketball?

6 A. No.

7 Q. The New Jersey Nets, do they wear red headbands
8 when they're playing?

9 A. Do they wear red headbands?

10 Q. Yes.

11 A. You might catch one with their red headbands on.

12 Q. Did you have that red headband on all night?

13 A. Yes, sir.

14 Q. Never took it off?

15 A. Not that I can recall unless I was sweatin' or
16 something.

17 Q. Any other headgear that night?

18 A. No, sir.

19 Q. No, sir. Just the red headband?

20 A. Yes.

21 Q. Your jacket, I notice in the photos at one point
22 the jacket is on, the next point it is off, 'right?

23 A. Yes.

24 Q. Why were you taking it on and off?

25 A. I was in a club, like a hall. It was a party. I

1 was hot, I took it off. It's right there on the floor as
2 you can see. You can look in the picture. You see it
3 right there? (Indicating).

4 Q. Yes.

5 A. See the flag on the back of it?

6 Q. Uh-huh.

7 A. Yeah.

8 Q. Now, earlier in the evening how much had you worn
9 the jacket?

10 A. Earlier?

11 Q. Yes, before you got to Aloyosius.

12 A. I had it on.

13 Q. The whole time?

14 A. Not when I was in the bar. I took it off. When I
15 came out of the bar, I put my jacket on.

16 THE COURT: Ladies and gentlemen, we're
17 going to take a short recess. Remember the
18 admonition. Don't discuss the case with anyone or
19 let anyone discuss it with you. Please don't form
20 an opinion about this case until it is in your
21 hands for deliberation.

22 (Thereupon, a recess was taken.)

23 (Thereupon, the jury was brought
24 into open court and proceedings
25 were as follows:)

1 THE COURT: Before we get started, last
2 week Juror No. 3 was excused because of a
3 vacation, and I didn't place this on the record.
4 So everybody agreed to put the alternate in, the
5 first alternate; is that correct?

6 MR. WATSON: Yes.

7 MR. THOMAS: Yes.

8 MR. WILLIS: Yes.

9 MR. MACK: Right.

10 THE COURT: Mrs. Tully, thank you for being
11 No. 3 now. We had to put that on the record.
12 You're not Mrs. Tully. The birthday boy put the
13 wrong person in that seat. I'm going to guess
14 you're Mrs. Tully. Mrs. Tully was excused. Mrs.
15 Winter? Okay. Mrs. Winter should actually be in
16 this seat. You are still an alternate Mrs. -- I
17 surely hope you are Mrs. Debose.

18 JUROR DEBOSE: Yes.

19 THE COURT: Everybody have their list? Do
20 you know what I am saying? I'm going to have
21 counsel come up here.

22 (Thereupon, a discussion was had
23 between Court and counsel outside
24 the hearing of the jury and off the
25 record.)

(Thereupon, the jury was brought into open court and proceedings were as follows:)

THE COURT: Okay. I sit corrected. Now confused. Mrs. Debose, is you?

JUROR DEBOSE: Yes.

THE COURT: You are right where you belong. Excellent. Mrs. Winter, that is you. You are right where you belong. And this is why I should have done it when we switched on Friday. Thank you. Go ahead, Mr. Thomas.

MR. THOMAS: Thank you, your Honor.

BY MR. THOMAS:

Q. Mr. Sailor, who is Bobby Nettles?

A. A friend of mine.

MR. MACK: Objection, your Honor.

THE COURT: Overruled.

Q. A friend from where?

A. My neighborhood.

Q. Okay.

A. Live around the corner from my mother.

Q. How long have you known him?

A. Like 12, maybe 13 years.

1 Q. Was he with you that night?

2 A. He was in The Benjamin that night.

3 Q. Has he been here in court this week or past?

4 A. No.

5 Q. Who is Bernadette Brown?

6 A. Bernetta Brown?

7 Q. Yes.

8 A. That's my mother.

9 Q. Was she with you that night?

10 A. No.

11 MR. MACK: Your Honor. I need --

12 THE COURT: Come on up.

13 - - - - -

14 (Thereupon, a discussion was had
15 between Court and counsel outside
16 the hearing of the jury and off the
17 record.)

18 - - - - -

19 (Thereupon, the following proceedings
20 were had in open court:)

21 BY MR. THOMAS:

22 Q. Mr. Sailor, showing you State's 132, are you in
23 these six photos?

24 A. Yes.

25 Q. Where?

1 A. Right here, (indicating).

2 Q. Okay. And do you agree that photo existed before
3 November 16, 2002?

4 A. I'm not sure.

5 Q. Why aren't you sure?

6 A. Because I was down here in February, beginning of
7 March I was down here.

8 Q. Okay. Now, the gun that you said that you carried
9 in the past, what kind of gun was it?

10 MR. MACK: Objection, your Honor.

11 THE COURT: Objection is sustained.

12 MR. THOMAS: May we approach?

13 THE COURT: You may.

14 - - - - -

15 (Thereupon, a discussion was had
16 between Court and counsel outside
17 the hearing of the jury and off the
18 record.)

19 - - - - -

20 (Thereupon, the following proceedings
21 were had in open court:)

22 BY MR. THOMAS:

23 Q. Who is J.D. White?

24 A. Who?

25 Q. John White.

- 1 A. That's Cordell's brother.
- 2 Q. Do you know him?
- 3 A. Yes, sir.
- 4 Q. How long have you known him?
- 5 A. Long as I've known Cordell.
- 6 Q. That has been how long?
- 7 A. Over ten years.
- 8 Q. Do you know Umar Clark?
- 9 A. No, sir.
- 10 Q. Now Monica Williams, do you know her?
- 11 A. Yes.
- 12 Q. How do you know her?
- 13 MR. MACK: Objection!
- 14 A. We had sex before.
- 15 Q. Does she have children?
- 16 A. Yes.
- 17 Q. How many children?
- 18 A. I think she got like three. I'm not sure.
- 19 Q. Do you know who the father of those children are?
- 20 A. I have known it was Umar.
- 21 Q. Do you know Takema?
- 22 A. Yes, sir.
- 23 Q. How do you know Takema?
- 24 A. That is Cordell's kid's mother.
- 25 Q. How long have you known Takema?

1 A. Quite some years.

2 Q. How many years would you say?

3 A. Probably like over ten.

4 Q. Now, the night of the 16th while the two of you
5 were traveling in the white focus, is it?

6 A. Yes.

7 Q. While driving around, have you ever had occasion to
8 borrow Cordell's phone to make personal calls with his
9 phone?

10 A. No.

11 Q. Never?

12 A. I mean, probably so. Like if mine was dead, but
13 not too often.

14 Q. I believe your earlier testimony was that during
15 November of 2002 you didn't have a phone, right?

16 A. I did have a phone. You said a phone account. I
17 didn't have a phone account. I owned a phone.

18 Q. Was it active?

19 A. Yes.

20 Q. What was the number?

21 A. It was 215-4697.

22 Q. Okay. Did you have it with you that night?

23 A. Yes, sir.

24 Q. At any time that night did you call Cordell?

25 A. I believe so.

1 Q. About what time?

2 A. I'm not sure. Probably like prior to the time we
3 was -- If I did call him, I called him to see where he was
4 at, or telling him we was about to leave, something like
5 that.

6 Q. How many times did you use your phone to call
7 Cordell that night?

8 A. I don't recall.

9 Q. More than five?

10 A. No.

11 Q. Less than five?

12 A. Yes.

13 Q. More than three?

14 A. I'm not sure.

15 Q. What is that number again?

16 A. 215-4697.

17 Q. What time did the two of you get together that
18 night Saturday?

19 A. He came to The Benjamin like after 11:30.

20 Q. Did you call him before hooking up that night?

21 A. Yes.

22 Q. Did you call him at any point through the course of
23 the night?

24 A. Like I said, probably to see where he was at. We
25 was in the bar.

1 Q. You said Benjamin's is a small bar?

2 A. When we was in The Benjamin I don't recall calling
3 him.

4 Q. What about 4U2B?

5 A. Probably so.

6 Q. What time would that have been?

7 A. Any time after 1:00.

8 MR. THOMAS: One moment, please. May I
9 approach the witness, your Honor?

10 THE COURT: You may.

11 Q. Cordell's number again is 513-7870?

12 A. Yes, sir.

13 Q. Let me ask you to look at Page 4 of State's 141.

14 And look down this column, tell me if your number appears.

15 The third column from the right.

16 A. This one? This one, right? (Indicating).

17 Q. Yes.

18 A. Yeah. Right here, (indicating).

19 Q. Okay. That is Ledger 131?

20 A. Uh-huh.

21 Q. November 17th at 14:07:29 hours, correct?

22 A. Yes.

23 Q. It's to Cordell's number, and your number calling
24 is 215-5619?

25 A. Yes.

1 Q. Success for 58 seconds. Do you agree?

2 A. Yes.

3 Q. Do you remember where you were when you called at
4 that time?

5 A. What time is that?

6 Q. Well, 14 would be about 2:00 in the afternoon on
7 Sunday.

8 A. I was at home.

9 Q. Okay. Why were you calling Cordell?

10 A. 'Cuz that my friend. I talk to him often.

11 Q. Highlight that number if you would. That is 131.

12 A. The whole line?

13 Q. Yes.

14 A. (Indicating).

15 MR. WATSON: What time was that, 1:31?

16 MR. THOMAS: No, 14:07:29 on the 17th.

17 Q. Does it appear anywhere else on the page?

18 A. No, sir.

19 Q. Let's go on to Page 3. I'm going to ask you to do
20 the same thing. This is part of the 17th and part of the
21 18th but, again, if you would scan this column and tell me
22 if your number appears.

23 A. Yeah. Right here, (indicating).

24 Q. Why don't you put a mark on where you see it. That
25 is Ledger 80.

1 A. (Indicating).

2 Q. November 18th, 2002 at 11:28:04, success for 38
3 seconds.

4 A. Right there, (indicating).

5 Q. Again you have Ledger 87, the 17th at 23:48:19.
6 That is success for 30 seconds. Then Ledger 88, 23:46 on
7 the 17th, success for 29 seconds. Then Ledger 105,
8 November 17th, at 19:44, success for 25 seconds. Do you
9 remember these calls?

10 A. No.

11 Q. Do you remember talking to Cordell on either Sunday
12 evening or --

13 A. I talk to him probably like six or seven days out
14 of a week.

15 Q. Okay. Do you remember why you were calling him
16 just before Monday -- or just before midnight on Sunday
17 night? You called him twice.

18 A. Probably to go out.

19 Q. Okay. Let's go on with what is described as Page
20 2, calls all occurring on November 18th. Would you check
21 that page and tell me if you see your number.

22 A. (Indicating).

23 Q. That is the 18th at 13:59, success for 30 seconds,
24 the 18th at 13:55 for 33 seconds. Those are Ledgers 36
25 and 37?

1 A. (Indicating).

2 Q. Any other calls by you on that page?

3 A. No, sir.

4 Q. Let's go on to what is described as Page 1. It
5 begins with Ledger 1 through 35. Do the same process.

6 A. Here you go right here, (indicating).

7 Q. Ledger 35, November 18th, 14:03, success for 31
8 seconds. Did you make that call?

9 A. I believe so.

10 Q. Let's go through Page 7, same process.

11 A. No.

12 Q. So for Page 7 the ledger is 221 through 257 which
13 covers midnight. There were no calls by you, right?

14 A. No.

15 Q. The first ledger, November 17th, describes a call
16 time of 0:41, and 257 at the bottom of the page, November
17 16th, describes a call at 19:24. Do you agree 19:24,
18 which if we take away 12, is 7:24 in the evening?

19 A. Right.

20 Q. On the 16th, 41 minutes after midnight on the 17th,
21 there doesn't appear to be any calls to you to Cordell, do
22 you agree?

23 A. He was callin' me. You missin' that right there,
24 (indicating).

25 Q. Did you call in to him?

1 A. No.

2 Q. Let's deal with those lines. Where do you first
3 see that beginning? That is the Star 82 to unblock the
4 caller privacy. You heard that testimony, right? So he
5 is punching in 82 before he dials your number so you will
6 know it's him calling?

7 A. Yeah. That is how we -- I don't answer private
8 calls.

9 Q. It could be the police, right?

10 A. Police don't call my phone.

11 Q. If it is private, you don't know who's calling?

12 A. I seen --

13 Q. Line all those calls that you see where Cordell
14 dialed your number.

15 THE COURT: Mr. Mack, can I just see you
16 for one second?

17 Q. Any other references to your number on this page?

18 A. No.

19 Q. I'm sorry?

20 A. No.

21 Q. Okay. The ones that you have just highlighted are
22 Ledgers 237, 238 and 239, November 16th. And Ledger 237,
23 time is 23:22, which is 11:32 p.m. Saturday night, right?

24 A. Uh-huh.

25 Q. Is that a yes?

1 A. Yes.

2 Q. And it shows Cordell apparently unblocking his call
3 to dial your number, 82, 215-4697?

4 A. Yes.

5 Q. Succession for 107 seconds?

6 A. Yes.

7 Q. Do you remember that call?

8 A. Yeah.

9 Q. What was it about?

10 A. Before he got to the bar.

11 Q. Ledger 238, November 16, 23:31:45. Again the same
12 process of Cordell unblocking his privacy manager and
13 dialing your number, and it shows success for 39 seconds.
14 That is immediately following the first call, 23:31 and
15 23:32. Do you remember a second call?

16 A. Not really.

17 Q. Do you know why he had to break off and call you
18 right back?

19 A. No.

20 Q. Ledger 239, November 16th, 2002 at 23:27:59. We're
21 going backward in progression here but the same process
22 again. 82, 215-4697, success for 51 seconds. Do you
23 remember that call?

24 A. No.

25 Q. That would actually be the first call in sequence,

1 23:27. And these came after, 23:31 and 23:32?

2 A. Yes.

3 Q. Do you know why Cordell called you three times?

4 A. I'm not sure.

5 Q. Did you say that you knew Nichole's number?

6 A. No.

7 Q. You have been sitting here through the trial,
8 right?

9 A. Yes.

10 Q. What do you recall from sitting through the trial
11 her number to be?

12 A. It's on the board. I don't know the number. 926
13 number.

14 Q. 926-5057?

15 A. Yes.

16 Q. Would you agree we touched on this earlier, from
17 Ledger 228, which is three minutes after midnight on the
18 17th, up through Ledger 221, your number does not appear
19 either being called by Cordell, or you calling Cordell,
20 correct?

21 A. Correct.

22 Q. Page 6. Please let's go through the same process.
23 Look for calls in by your number. First dealing with the
24 calls in the column, third from the right, any calls by
25 you to Cordell?

1 A. No.

2 Q. Now, you have identified some where Cordell has
3 called you?

4 A. Yes.

5 Q. Can you please use the highlighter on those?

6 A. (Indicating).

7 Q. These are the calls by him unblocking, again, with
8 using 82 before he dials your number, correct?

9 A. Yes.

10 Q. We are talking about Ledgers 211 and 212?

11 A. Yes.

12 Q. 212 occurring on the 17th at 1:09, right?

13 A. Yes.

14 Q. Success for 57 seconds?

15 A. Yes.

16 Q. Then Ledger 211 on the 17th at 1:10 a.m., a
17 48-second call out by him unblocking his phone to your
18 number, and success for 55 seconds, correct?

19 A. Yes.

20 Q. Do you remember those calls?

21 A. No.

22 Q. Where were you at that time?

23 A. We was probably either in The Benjamin or at the
24 4U2B.

25 Q. Let's work on Page 5. Same process. The in calls.

1 Scan that column for your number. Please highlight it.

2 A. (Indicating).

3 Q. You've just highlighted 152 on Page 5, November
4 17th, at 10:59 a.m., success for 23 seconds. That is a
5 call by you to him. And now you highlighted Ledger 154 at
6 same date, November 17th, 10:40 a.m., success for 16
7 seconds. 156 ledger also 10:13 a.m., success for 106
8 seconds.

9 Do you see any other calls either by
10 Cordell to your number, or you calling Cordell on Page 5?

11 A. No.

12 Q. On Page 4 we already covered. Your time line of
13 the bar travel was you arrived at Benjamin's what time?

14 A. Like 11:30.

15 Q. Okay. You stayed at Benjamin's how long?

16 A. Few hours. Until like 12:45 maybe, something to 1.

17 Q. Okay. You arrived at 4U2B at what time?

18 A. Probably like 1:10, 1:15.

19 Q. Stayed there how long?

20 A. Until like 2. Yeah, something like that.

21 Q. After 2 you went to Aloysius?

22 A. Yes, sir.

23 Q. You stayed there how long?

24 A. Like 40, 50 -- probably an hour. I'll give it an
25 hour.

1 Q. We didn't hear about any of these calls on direct
2 examination, did we?

3 A. Hear about any of the calls?

4 Q. What I just brought out here through this record.
5 Your attorney did not ask you about any of those calls,
6 did he?

7 A. No, sir.

8 MR. MACK: Objection, your Honor.

9 THE COURT: Overruled.

10 Q. What hospital did you go to when your face got
11 busted?

12 A. I was in -- I was in Huron Road.

13 Q. That is when you got hit in the face with the
14 brick?

15 A. Yes, sir.

16 Q. Now, you are saying that was December of '01, not
17 '02?

18 A. Yes. I never said it was '02.

19 Q. I believe your attorney referenced it as '02.
20 Huron Road. These photos from the cabaret, do you
21 agree -- First of all, take a look at these real good.
22 Tell me if anything is written on the back itself aside
23 from the folder. Is there any information on the back of
24 the photo?

25 A. No, sir.

1 Q. That is as to which exhibit?

2 A. N.

3 Q. Okay. Would you do the same thing with O, please.

4 A. No, sir.

5 Q. And same thing with M.

6 A. No, sir.

7 Q. Okay. So there is no time or date or anything on
8 this, right?

9 A. No, sir.

10 Q. No time of the evening?

11 A. No, sir.

12 Q. Okay. Who is in Defendant's Exhibit M? Going from
13 left to right it is Cordell, yourself, and who is this,
14 (indicating)?

15 A. Rome.

16 Q. What is his last name?

17 A. I don't know his last name.

18 Q. How do you know him?

19 A. He's Cordell's cousin.

20 Q. Was he anywhere besides Aloysius that night with
21 you guys?

22 A. Every bar we was at he was there.

23 Q. At Benjamin's from the time that you stated?

24 A. Yes.

25 Q. And 4U2B?

1 A. Yes.

2 Q. Then Defendant's Exhibit O, is that Rome again?

3 A. Yes.

4 Q. The three of you again. Then in Defendant's
5 Exhibit N who are these -- I see Cordell in the middle.
6 There is a woman with her arm around him?

7 A. I don't know her.

8 Q. Who is the man to the left of the female?

9 A. I don't know the dude either. I don't know him.

10 Q. As this photo was taken, you're standing with your
11 leather. There is a person behind you with their hand in
12 the air. Do you know who that was?

13 A. Let me see. That's Rome.

14 Q. You don't know the male and female, but were they
15 with you all night at Aloysius?

16 A. They know Cordell.

17 Q. Okay. Do you know how they know Cordell?

18 A. No.

19 Q. Were they there at the cabaret?

20 A. Yes.

21 Q. Do you remember them being there the entire time
22 that you were there?

23 A. Yes.

24 Q. Do you know any name or street name for them?

25 A. I just know they call the girl Smiley, that is what

1 Cordell call her, and I don't know nothing else.

2 Q. Do you know if he has had a relationship with her?

3 A. No.

4 MR. WATSON: Objection.

5 THE COURT: Overruled.

6 Q. Have you seen them attend court, or this trial?

7 MR. WATSON: Objection.

8 THE COURT: Overruled.

9 A. Who?

10 Q. Rome, or Smiley, or the male standing next to
11 Smiley?

12 MR. WATSON: Objection.

13 THE COURT: Overruled.

14 A. No.

15 Q. Did we touch on Leshawn McCreary's phone number?
16 Do you know her phone number?

17 A. No.

18 MR. THOMAS: Right now today if I could --
19 Your Honor, can I ask the witness -- can we put
20 the microphone down for a second?

21 THE COURT: Sure.

22 Q. Right now today, how are you wearing your facial
23 hair?

24 A. I mean, I need a haircut.

25 Q. You have a light shadow of a mustache, do you

1 agree?

2 THE COURT: You have to answer out loud for
3 the court reporter.

4 A. Yes.

5 Q. You have got more growth underneath your chin than
6 along the jawline, but there is growth from the jawline to
7 the chin, do you agree?

8 A. I get my hair cut once a week so I ain't never have
9 nothing but this and this, (indicating).

10 Q. You don't usually wear your facial hair like this?

11 A. Just this and my mustache. I don't usually have
12 none of this. (Indicating).

13 Q. You are saying yes to what is underneath your chin,
14 like the short goatee?

15 A. Yes.

16 Q. And yes to the light mustache?

17 A. Yes, yes.

18 Q. In fact, in Defendant's Exhibit M can you look at
19 yourself and tell me what facial hair it displays?

20 A. It appear I got a mustache right there but I still
21 got this hair right here, (indicating).

22 Q. When you say right here, (indicating), you are
23 talking about the short goatee rubbing your chin?

24 A. Yes.

25 Q. What is Cordell's facial hair in that photo?

1 A. About the same.

2 Q. Light mustache?

3 A. Yeah. His chin hair thicker than mine, though.

4 Q. He also has sort of a goatee in the photo?

5 A. I don't see it. This, (indicating), what you call
6 a light goatee?

7 Q. I don't mean that it has to run into -- I'm calling
8 any hair underneath the chin a light goatee.

9 A. Yeah.

10 Q. Would you agree Defendant's Exhibit O shows
11 basically the same thing --

12 A. Yes.

13 Q. -- for both of you?

14 A. Yes.

15 Q. How much did you have to drink that night?

16 A. I don't really recall.

17 Q. You said earlier in your testimony that you were
18 intoxicated?

19 A. Yeah. I had been to two bars. I was in The
20 Benjamin for quite awhile.

21 Q. What was your beverage of choice, your alcoholic
22 beverage of choice that night?

23 A. Tanqueray.

24 Q. That is a gin?

25 A. Yes.

1 Q. How do you take your gin?

2 A. With ice and a lemon.

3 Q. Straight up, no mixer?

4 THE COURT: You have to answer out loud.

5 A. No. No, sir.

6 Q. How many Tanquerays and lemon did you have?

7 A. I'm not sure.

8 Q. You don't remember?

9 A. I don't remember.

10 Q. At the beginning of the night at Benjamin's do you
11 remember how many you had there?

12 A. No.

13 Q. Did you have any alcohol at home to get ready for
14 the evening?

15 A. No. I don't have alcohol in the house.

16 Q. Do you guys share any alcohol in the car during the
17 road trips between?

18 A. No, sir.

19 Q. Smoke any weed that night?

20 A. Yes, sir.

21 Q. How much?

22 A. Not a lot.

23 Q. When did you smoke the weed?

24 A. Before I went in Benjamin's.

25 Q. Whose weed was it?

1 A. My weed.

2 Q. A blunt?

3 A. Yes, sir.

4 Q. Just one?

5 A. Yes, sir.

6 Q. Did Cordell have any weed?

7 A. He don't smoke.

8 Q. You smoked the entire blunt by yourself?

9 A. Not the entire blunt. I only smoked half of it and

10 put it out.

11 Q. Ever smoked any Wet?

12 A. No. I don't like that.

13 Q. What about cocaine?

14 A. No.

15 Q. So you had half a blunt or more before Benjamin's?

16 A. Half a blunt.

17 Q. Okay. Tanqueray and lemon, at least one at

18 Benjamin's?

19 A. Yes.

20 Q. At least two at Benjamin's?

21 A. About three or four maybe.

22 Q. Three to four Tanquerays and lemon at Benjamin's?

23 A. Yes.

24 Q. When you went to the 4U2B how many did you have?

25 A. We weren't there for long so I probably had one.

1 Q. You weren't there for long. How long were you
2 there?

3 A. Maybe an hour, if that.

4 Q. At St. Aloysius did you have anything to drink?

5 A. No. They wouldn't serve any liquor when we got
6 there.

7 Q. Anybody pouring drinks in the parking lot?

8 A. No.

9 Q. Toni's car, this female friend that loaned you her
10 car, you were driving that car drunk and high?

11 A. Yes.

12 Q. Did you have any insurance to protect her that
13 night?

14 MR. MACK: Your Honor, objection.

15 THE COURT: The objection is sustained.

16 Q. You have heard the earlier testimony about the
17 calls from Nichole's phone to Cordell?

18 A. Yes.

19 Q. They are on State's 141 and show calls before or
20 after midnight, right?

21 A. I ain't look at her number.

22 Q. Okay. Right here on Page 7, her number is the 5057
23 number. See beginning at Ledger 223 and going down to
24 231, (indicating)?

25 A. Yes.

1 Q. All right. You were with Cordell during that time
2 period?

3 A. Yes.

4 Q. Do you remember him talking to his sister?

5 A. No.

6 Q. You don't want to remember?

7 MR. MACK: Objection.

8 MR. WATSON: Objection.

9 MR. THOMAS: No further questions.

10 THE COURT: Mr. Watson?

11 MR. WATSON: Thank you, your Honor.

12 - - - - -

13 CROSS-EXAMINATION OF RU-EL SAILOR

14 BY MR. WATSON:

15 Q. Mr. Sailor --

16 A. Yes.

17 Q. -- when the prosecutor showed you these phone
18 records, I guess it was State's Exhibit -- I guess we have
19 separate exhibits. But, nonetheless, that was your first
20 time ever looking at those phone records; is that fair to
21 say?

22 MR. THOMAS: Objection.

23 A. Yes.

24 THE COURT: Overruled.

25 Q. Meaning that you were not -- these phone calls were

1 not reviewed with you prior to you testifying today?

2 A. No, sir.

3 Q. Can you tell us whether or not Cordell Hubbard
4 works at the McClain's Market?

5 A. Yes.

6 Q. Does he work in the capacity as a manager at one of
7 the stores?

8 A. Yes, sir.

9 Q. Which store is that, sir?

10 A. He work at both of them as manager. He open and
11 close them sometimes.

12 Q. Okay. Where are those stores located?

13 A. One is on 116th across town, the other is on 32nd
14 and Central.

15 Q. Okay. Are you familiar with whether or not the
16 father has or the family owns a general contracting
17 business?

18 A. I'm not sure.

19 Q. You're not sure about that. But you're sure about
20 the stores, correct?

21 A. Yes.

22 Q. Now, since you've known Cordell how long has that
23 been?

24 A. Like over ten years. We been in the same grade
25 together.

1 Q. To the extent since you have associated with him
2 you know that store to be in existence since your
3 relationship with him; fair to say?

4 A. Yes, yes.

5 Q. And you have been there and been present at that
6 store on numerous occasions; is that correct?

7 A. Yes, yes.

8 Q. You know Pamela Hubbard?

9 A. His mother.

10 Q. His mother, right?

11 A. Yes.

12 Q. You are familiar with the Golden Ciphers, aren't
13 you?

14 A. Yes.

15 Q. That is a community-based group with girls; is that
16 fair to say?

17 A. Yes.

18 Q. The dad works in the business, and there are a
19 number of employees at both stores; fair to say?

20 A. Yes.

21 Q. You are familiar with McClain's Market with regard
22 to community activities, correct?

23 A. Yes.

24 Q. Now, taking you back to the night in question
25 where you and Cordell -- you told us about Sherome. He

1 was with you at the 4U2B as well as St. Aloysius?

2 A. Yes.

3 Q. We know at the cabaret there was a birthday party.

4 Did you know it to be a birthday party?

5 A. No. I didn't even know the purpose -- I just --
6 Sherome called and said that he was going.

7 MR. THOMAS: Objection.

8 THE COURT: Objection sustained.

9 Q. You understand that Sherome was supposed to meet
10 his girlfriend at this birthday party, correct?

11 MR. THOMAS: Objection.

12 THE COURT: Overruled.

13 MR. WATSON: If he knows.

14 A. I'm not sure.

15 Q. Now, very early on we've talked before; is that
16 correct?

17 A. Yes.

18 Q. By way of telephone?

19 A. Yes.

20 Q. Correct. First time that I talked to you was
21 sometime in December; is that fair to say?

22 A. Yes.

23 Q. It's fair to say that I spoke to you as a witness?

24 MR. THOMAS: Objection.

25 A. Yes.

1 THE COURT: Sustained.

2 Q. What did you understand my phone call to be?

3 MR. THOMAS: Objection.

4 THE COURT: Objection is sustained.

5 Q. The prosecutor went through those phone calls. Do
6 you remember specifically whether or not you called
7 Cordell, or Cordell called you?

8 A. I'm not sure. We just be on the phone, you know
9 what I'm sayin'.

10 Q. You told us during the period of time that you were
11 at Benjamin's Bar, you told us, if I characterized it as
12 such, you said between 10:30 or 11 or 11:30 that you were
13 present at The Benjamin Bar; is that correct?

14 A. Yes, sir.

15 Q. The prosecutor showed you a list of phone calls
16 that were made --

17 MR. WATSON: May I approach the witness,
18 your Honor?

19 THE COURT: Yes.

20 Q. -- which is Defendant's Exhibit, I believe, P, and
21 discussed with you the timing of those phone calls after
22 237, 238 and 239. Do you see that?

23 A. Yes.

24 Q. These are in military time. Do you understand what
25 military time is?

1 A. I do now. Yeah.

2 Q. Okay. In the timing of those phone calls you
3 understand that 23:32 hours is?

4 A. 11:32.

5 Q. Okay. Same as 23:27; is that correct?

6 A. Huh?

7 Q. 23:27?

8 A. Yeah, that is 11:27, yeah.

9 Q. You told us that Cordell came to the bar sometime
10 after that?

11 A. Yes.

12 Q. Fair to say?

13 A. Yes.

14 Q. Do you know who he was rappin' against?

15 A. Bobby Nettles.

16 Q. You were the one that characterized it wasn't much
17 of a contest because he was not a very good rapper. Was
18 that you?

19 A. Yes.

20 Q. The prosecutor told you about some calls that
21 occurred about 1:10 and 1:09. Do you recall him asking
22 you questions about that?

23 A. Yes.

24 Q. There were some phone calls made, Cordell to you;
25 is that right?

1 A. Yes.

2 Q. Your best guess or best estimate, the sequence of
3 those calls was probably?

4 A. Either he was calling me to say that he ready to go
5 from The Benjamin, or he was already at the 4U2B. I'm not
6 sure because --

7 Q. That is your best recollection what those phone
8 calls may have been; is that right?

9 A. Yes.

10 Q. We know one thing for certain. You guys were
11 together at The Benjamin Bar?

12 A. Yes.

13 Q. Right. You guys were together at the 4U2B club?

14 A. Yes.

15 Q. Right. And you were together at St. Aloysius?

16 A. Yes.

17 Q. Is that fair to say? Is that fair to say, sir?

18 A. Yes.

19 Q. The prosecutor asked you a lot of questions about
20 headbands. Do you recall those questions?

21 A. Yes.

22 Q. It's very popular to wear headbands; isn't that
23 fair to say?

24 A. Yes.

25 Q. If anyone would suggest to you that you and Cordell

1 started a trend with headbands, that wouldn't be correct,
2 would it?

3 A. No.

4 Q. Just like wearing these jerseys. Your jersey and
5 the 42 jersey he's wearing, it's fair to say that is kind
6 of a trendy thing people your age wear?

7 A. Yes.

8 MR. WATSON: No further questions. Thank
9 you.

10 THE COURT: Mr. Willis? Mr. Mack?

11 MR. MACK: Thank you, your Honor.

12 - - - - -

13 REDIRECT EXAMINATION OF RU-EL SAILOR

14 BY MR. MACK:

15 Q. You went through these series of questions about
16 the telephone calls. I think there was some discussion
17 about calls on November the 18th?

18 A. Yes.

19 Q. Did you know on November the 17th or 16th this
20 person by the name of Omar Clark had been shot?

21 A. No, sir.

22 Q. So when you called Cordell on the 18th, what was
23 that about?

24 A. Just talk about what happened last night, or
25 something like that.

1 Q. Did you call him on the 19th?

2 A. Yes.

3 Q. The 20th?

4 A. Yes.

5 Q. So it was not unusual for you to call him; is that
6 correct?

7 A. No. We talk every day.

8 Q. Did you call him on the 16th?

9 A. Yes.

10 Q. There would be calls throughout. You indicated
11 that you talked to him approximately how many times?

12 A. When?

13 Q. I mean since you been friends per week.

14 A. Basically about six days out of the week, maybe
15 seven.

16 Q. Now, do I understand back when you say that you
17 were at Benjamin's you indicated there were people that
18 received telephone calls in the bar, or went in the
19 bathroom?

20 A. Yeah. Go in the bathroom or go stand outside to
21 talk on the phone because you can't really hear.

22 Q. You did indicate at one point in time Cordell went
23 outside to make some telephone calls?

24 A. Yeah. I probably did, too.

25 Q. You probably did, too. It's not like you were his

1 brother's keeper; is that correct?

2 MR. THOMAS: Objection.

3 A. Right.

4 THE COURT: Sustained.

5 Q. You were not with him -- You were not in his back
6 pocket, were you?

7 A. No.

8 Q. Again, you know what you saw on that particular
9 night; is that correct?

10 A. Yes.

11 Q. That is all you are testifying to?

12 A. Yes.

13 Q. Did you, in fact, shoot this man on the night of
14 either November 16th or November 17th?

15 A. No, sir.

16 THE COURT: Any further questions?

17 MR. MACK: I'm through, but may I reserve.

18 THE COURT: Please approach.

19 - - - - -

20 (Thereupon, a discussion was had
21 between Court and counsel outside
22 the hearing of the jury and off the
23 record.)

24 (Thereupon, the following proceedings
25 were had in open court:)

1 THE COURT: All right.

2 MR. MACK: Your Honor, at this time I'm
3 done.

4 THE COURT: All right. Mr. Thomas?

5 - - - - -

6 RE CROSS-EXAMINATION OF RU-EL SAILOR

7 BY MR. THOMAS:

8 Q. So both bars were loud, right?

9 A. Yes.

10 Q. And, for example, at Benjamin's you would have to
11 step in the bathroom or step outside --

12 A. Yes.

13 Q. -- to hold a phone call, right?

14 A. Yes.

15 Q. Yet from 12:40 through about 40 minutes or more of
16 that hour to 12:40 on until 1:30 or -- I'm sorry. 11:40
17 through 12:30 you are saying Cordell was in a rap contest?

18 A. Yes.

19 Q. Okay. Your recollection is that is what he was
20 doing?

21 A. Yes.

22 Q. You called the next day and talked about what
23 happened last night?

24 A. Yes.

25 Q. That is what I heard your testimony to be?

1 A. Yes.

2 Q. The one call around 1 a.m. or something that Mr.
3 Mack referenced, this was your testimony, I wrote it down,
4 He was calling to say he got there in reference to you.
5 Is that your testimony?

6 A. I say what? Repeat that again.

7 Q. The call at 1 a.m. or whatever Mr. Mack referenced
8 in State's 141, your explanation of the call was, He was
9 calling to say he got there. That's what I heard you say.

10 Do you recall that?

11 A. No, I don't recall that.

12 MR. THOMAS: Your Honor, may we have the
13 transcript read back?

14 THE COURT: Yeah, from Mr. Mack's
15 examination on redirect. Step back to the jury
16 room. She has to find that portion. Remember the
17 admonition. Don't discuss the case with anyone or
18 let anyone discuss it with you. Please don't form
19 or express any opinion about the case until it is
20 in your hands for deliberations.

21 - - - - -

22 (Thereupon, the jury was excused
23 and proceedings were as follows:)

24 - - - - -

25

1 (Thereupon, previous testimony
2 of Ru-el Sailor on redirect
3 examination by Mr. Mack was read
4 back by the reporter.)

5 THE COURT: You can ask the question again
6 if it is inconsistent with that answer; but,
7 otherwise, no.

8 MR. THOMAS: We already have the
9 inconsistency I thought.

10 THE COURT: Well, I think it's pretty --
11 Just ask again.

12 MR. THOMAS: Your Honor --

13 THE COURT: We need Mr. Willis. You can
14 ask him, Didn't you say. You've created the
15 situation, not me.

16 MR. THOMAS: I thought that I already had
17 the inconsistency in the question and answer that
18 I asked last.

19 THE COURT: You can ask him.

20 - - - - -

21 (Thereupon, the jury was brought
22 into open court and proceedings
23 were as follows:)

24 - - - - -

25 THE COURT: Mr. Thomas?

1 BY MR. THOMAS:

2 Q. Mr. Sailor, you recall my earlier question before
3 we broke to review the record. Around 1:09 or 1:10 in
4 explaining those calls you stated words to the effect,
5 under oath, that you were either calling him, meaning
6 Cordell, to see if he was ready to leave Benjamin's or see
7 if he already got to the 4U2B.

8 Do you recall that being your answer?

9 A. Since she read it, yes.

10 Q. And the attorney examining you later confirmed, And
11 that is your best recollection, and you answered yes?

12 A. Yes.

13 MR. THOMAS: Thank you. No further
14 questions.

15 THE COURT: Mr. Watson?

16 - - - - -

17 RECROSS-EXAMINATION OF RU-EL SAILOR

18 BY MR. WATSON:

19 Q. Mr. Sailor, when I asked you about those phone
20 calls, did I correctly understand you to mean that, one,
21 that you were either leaving Benjamin's --

22 A. Yes.

23 Q. -- or that you were already at the 4U2B club?

24 A. Yes.

25 Q. And you described the 4U2B club was a lot larger

1 in size --

2 A. Yes.

3 Q. -- than Benjamin's; is that correct?

4 A. Yes.

5 Q. How many employees does Benjamin's have?

6 A. Just security guard and bartender.

7 Q. You have been to The Benjamin a great number of
8 times; is that fair to say?

9 A. Yes.

10 Q. As a matter of fact, you have been to the bar after
11 November 16th or 17th?

12 A. Yes.

13 Q. Is that correct?

14 A. Yes.

15 Q. Would you say that you went there quite regularly
16 after November 16th or 17th?

17 A. Yes.

18 Q. Did you ever see the presence of Eugene Jones in
19 that bar?

20 MR. THOMAS: Objection.

21 THE COURT: Objection is sustained.

22 MR. WATSON: No further questions.

23 THE COURT: Mr. Willis?

24 MR. WILLIS: No.

25 THE COURT: Okay.

FURTHER REDIRECT EXAMINATION OF RU-EL SAILOR

BY MR. MACK:

Q. Mr. Sailor?

A. Yes.

THE COURT: Let the prosecutors take a look
5.

Q. Showing you what has been marked for purposes of identification as Defendant's Exhibit R, would you please take a look at this and, for the record, would you indicate what it is that I am handing you.

A. It's my leather coat that I got for my birthday.

Q. Okay. Do you recall where, if anyplace, that particular jacket was on November the 16th and November the 17th?

A. On my back.

Q. On your back. Okay. Can you identify and describe that particular jacket?

A. It's all black leather Phat Farm jacket with the flag on the back.

Q. Would you hold it up, please?

A. (Indicating), with a P. Patches on the sleeve.

Q. Would you hold the jacket up so the jury can see the patches on the sleeve?

A. (Indicating).

1 Q. Showing you what has been marked as Defendant's
2 Exhibit N, would you please take a look at that. Again,
3 for the record, what is it that I've handed you?

4 A. A picture of the party.

5 Q. Is there a jacket in that particular picture?

6 A. Yes.

7 Q. Is that the same jacket as Defendant's Exhibit R?

8 A. Yes.

9 Q. Is that jacket essentially the same as it was when
10 you wore it -- and I want you to take a look at it -- on
11 November 16th and November 17th?

12 A. Yes.

13 Q. And where has this jacket been?

14 A. At my house.

15 MR. MACK: No further questions, your
16 Honor.

17 THE COURT: Mr. Thomas?

18 MR. THOMAS: Thank you, your Honor.

19 - - - - -

20 FURTHER RECROSS-EXAMINATION OF RU-EL SAILOR

21 BY MR. THOMAS:

22 Q. It's been at your house until about 15, 30 minutes
23 ago?

24 A. Yes.

25 Q. Someone was dispatched to go get it, right?

1 A. Yes.

2 Q. Because it was not thought important enough to have
3 it here for your case until I questioned on it, right?

4 A. Yes.

5 Q. This rip on the back of the sleeve, how did this
6 happen?

7 A. I'm not sure. My brother be wearin' it without
8 permission.

9 Q. Which of these interior pockets is the gun pocket?

10 A. I'm not sure.

11 Q. Oh, but you've carried a gun in the past?

12 A. Right. No, not in that jacket.

13 MR. THOMAS: No further questions.

14 THE COURT: Mr. Watson?

15 - - - - -

16 FURTHER RECROSS-EXAMINATION OF RU-EL SAILOR

17 BY MR. WATSON:

18 Q. This is your jacket?

19 A. Yes.

20 Q. Do you want to try it on and see if it fits?

21 A. Sure.

22 Q. You wear your jacket big; is that right?

23 A. Yeah.

24 Q. That's the style?

25 A. Yeah.

1 MR. WATSON: No further questions.

2 THE COURT: Mr. Willis? You may step down,
3 sir. Mr. Mack, on behalf of Defendant Ru-el
4 Sailor?

5 MR. MACK: With the offering of
6 exhibits, I now rest my case on behalf of Mr.
7 Ru-el Sailor.

8 THE COURT: Mr. Willis, on behalf of
9 Nichole Hubbard?

10 MR. WILLIS: The Defense rests, your Honor.

11 THE COURT: Any rebuttal, Mr. Thomas and
12 Miss Clancy?

13 MR. THOMAS: No, your Honor.

14 THE COURT: All right. Ladies and
15 gentlemen, we are going to have lunch. Remember
16 the admonition. Don't discuss the case with
17 anyone, don't let anyone discuss it with you.
18 Please don't form an opinion about this case until
19 it is in your hands for deliberations.

20 There are a number of legal issues that
21 must be discussed. It will be a significant
22 amount of time. I will ask you to be back at
23 2:30. See you then.

24 - - - - -

25 (Thereupon, the jury was excused

1 and proceedings were as follows:)

2 THE COURT: Mr. Mack, are you renewing your
3 Rule 29 motion?

4 MR. MACK: Yes, your Honor. I will
5 incorporate all my arguments prior to this
6 particular time.

7 THE COURT: Are you incorporating your
8 arguments, Mr. Thomas?

9 MR. THOMAS: Yes, your Honor.

10 THE COURT: Motion is denied. Mr. Willis,
11 are you renewing your Rule 29 motion?

12 MR. WILLIS: I certainly am, your Honor. I
13 incorporate by reference all the statements that I
14 made in the course thereof, but I have another
15 motion after the Court resolves this motion.

16 THE COURT: Mr. Thomas?

17 MR. THOMAS: As to the complicity statute I
18 contend the language of aider and abettor clearly
19 indicates language of incitement. Can constitute
20 aider and abettor. There is testimony Nichole did
21 incite her brother when calling from 10622
22 Englewood and we, in addition to all the other
23 arguments and evidence in favor of the State of
24 Ohio's case, ask the motion be denied.

25 THE COURT: It's denied. Do you have

1 another motion?

2 MR. WILLIS: With reference to all the
3 witnesses that were interviewed, Cleveland police
4 officers, homicide detective Eugene Jones, we
5 ask the Court to require the State to scrutinize
6 all those statements as to whether or not there is
7 anything that could be used by the Defense as
8 beneficial to the Defendant which would make it
9 Brady material. And, to the extent the State
10 deems none of those statements would be
11 appropriate, I ask they be produced by the Court
12 and made a part of this record.

13 THE COURT: Take the lunch hour to look and
14 see if there is any Brady material about Eugene
15 Jones.

16 MR. WILLIS: Not only Gene Jones.

17 THE COURT: I thought --

18 MR. WILLIS: He is not the only person
19 that I am concerned with.

20 THE COURT: If there is any Brady material
21 in your file.

22 MR. THOMAS: I thought the Defense had
23 rested?

24 MR. WILLIS: I can always make a motion,
25 post-trial even.

1 THE COURT: Take a look. Over lunch I
2 would like you gentlemen to go through the
3 exhibits with the State. See which ones you are
4 offering, and then which ones that you will object
5 to, and only discuss the ones that are offered and
6 objected to. Then we are going to argue this
7 afternoon, we are going to charge in the morning.
8 I think we should talk about the charge before you
9 argue.

10 MR. THOMAS: Yes.

11 THE COURT: We will let Lisa have some
12 lunch.

13 - - - - -

14 (Thereupon, a luncheon recess was
15 taken until 2:30 p.m., Monday,
16 June 2, 2003, at which time the
17 following further proceedings were
18 had:)

19 - - - - -
20
21
22
23
24
25

1 JUNE 2, 2003, MONDAY AFTERNOON SESSION

2 MR. WATSON: I moved my exhibits.

3 THE COURT: We are going to do it right
4 now. It is my understanding with respect to
5 Defendant's Exhibit J, the statement of Gibbs, L,
6 the statement of Joseph Mayhand and, Q, the phone
7 of Samuel Brown, are not being offered; is that
8 correct?

9 MR. WATSON: That's correct.

10 THE COURT: The rest of the exhibits, A
11 through R, are being offered, correct?

12 MR. WATSON: That's correct.

13 THE COURT: There is no objection by the
14 State; is that correct?

15 MR. THOMAS: Correct.

16 MR. WILLIS: What about Joint Exhibit 1?

17 MR. THOMAS: I move it.

18 THE COURT: I can't remember what it is.

19 MR. THOMAS: Desatnik's Form 1.

20 THE COURT: You're offering that, Mr.
21 Thomas? No objection?

22 MR. WILLIS: No objection.

23 MR. WATSON: None.

24 MR. MACK: No.

25 - - - - -

1 (Thereupon, the jury was brought
2 into open court and proceedings
3 were as follows:)

4 - - - - -

5 THE COURT: Ladies and gentlemen, we are
6 now at the point in trial known as closing
7 arguments. The closing arguments, like opening
8 statements, is not evidence and it must not be
9 considered by you as evidence. It is an
10 opportunity for the lawyers to summarize the
11 evidence presented, and to present their theory of
12 the case. The State will go first, then each of
13 the Defendants will have an opportunity to address
14 you, and because the State has the burden of proof
15 the State will have another opportunity to address
16 you.

17 I anticipate we will have closing arguments
18 today, tomorrow morning come in fresh and I will
19 give you the instruction of law or what is called
20 charge of the Court.

21 All right. On behalf of the State of Ohio,
22 Miss Clancy.

23 MS. CLANCY: Thank you, your Honor.
24
25

1 offender had a firearm on or about his person or
2 under his control while committing the offense.
3 And there is another firearm specification. The
4 grand jurors find and specify the offender had a
5 firearm on or about his person or under his
6 control while committing the offense and displayed
7 the firearm, brandished the firearm, indicated
8 that he possessed the firearm, or used it to
9 facilitate the offense.

10 In Count 2 of the indictment it's
11 complicity in the commission of aggravated murder.
12 Again, that pertains to the Defendants Ru-el
13 Sailor and Cordell Hubbard. Again, it's the grand
14 jurors on their oaths further find the Defendants
15 unlawfully did purposely aid or abet each other in
16 committing a violation of Section 2903.01, which
17 is aggravated murder of the Revised Code,
18 purposely and with prior calculation and design
19 caused the death of another, Omar Clark.

20 Again, the same two firearm specifications
21 that are in the first count apply.

22 Count 3 of the indictment is murder. This
23 count pertains to all three of the Defendants.
24 The grand jurors on their oaths further find the
25 Defendants unlawfully did cause the death of Omar

1 Clark as a proximate result of the offenders
2 committing or attempting to commit an offense of
3 violence, a felony of the 1st or 2nd degree. And
4 we would argue that, alternatively, kidnapping is
5 a felony of the 1st degree and a felonious assault
6 is a felony of the 2nd degree in violation of
7 Section 2903.02 of the Revised Code. Again, the
8 same two firearm specifications apply.

9 Count 4, the indictment is a complicity in
10 the commission of murder and, again, it's all
11 three Defendants. The grand jurors on their oaths
12 further find the Defendants unlawfully did
13 purposely aid or abet each other in committing a
14 violation of Section 2903.02 of the Revised Code.
15 They did cause the death of Omar Clark as a
16 proximate result of the offenders committing or
17 attempting to commit an offense of violence. That
18 is a felony of the 1st degree or 2nd degree.

19 Again, we would make the same argument as
20 applies to a kidnapping and felonious assault.
21 There are those firearm specifications that I
22 talked about.

23 Count 5 of the indictment is kidnapping.
24 It applies to all three Defendants. The grand
25 jurors on their oaths further find the Defendants

1 unlawfully and by force, threat, or deception
2 removed Omar Clark from the place where he was
3 found or restrained him of his liberty for the
4 purpose of facilitating the commission of a felony
5 or the flight thereafter and/or terrorizing and/or
6 inflicting serious physical harm on Omar Clark.
7 And there are the firearm specifications again.

8 Count 6 of the indictment is a complicity
9 in the commission of kidnapping. That is the
10 grand jurors on their oaths further find that the
11 Defendants unlawfully did purposely aid or abet
12 each other in committing a violation of Section
13 2905.01, which is a kidnapping, of the Revised
14 Code by force, threat, or deception removed Omar
15 Clark from the place where he was found or
16 restrained him of his liberty for the purpose of
17 facilitating the commission of a felony or in the
18 flight thereafter and/or terrorizing and/or
19 inflicting serious physical harm on Omar Clark.
20 Again, the same two firearm specifications apply.

21 Count 7 of the indictment is kidnapping.
22 I'm not going to read the count to you again. The
23 difference being the victim in Count 7 is Clark
24 Williams/Clark Lamar, who we heard from in the
25 beginning of this trial. Again, the same two

1 firearm specifications. It applies to all three
2 Defendants.

3 Count 8 is a complicity in the commission
4 of kidnapping and, again, I'll briefly read to you
5 commission and complicity in the kidnapping and,
6 again, it pertains to Clark Lamar, and that would
7 be they did aid or abet one another.

8 Count 9 is a felonious assault. That
9 pertains to all three Defendants. The grand
10 jurors on their oaths further find the Defendants
11 unlawfully did knowingly cause serious physical
12 harm to Omar Clark and/or knowingly did cause or
13 attempt to cause physical harm to Omar Clark by
14 means of a deadly weapon or dangerous ordnance, a
15 firearm, which will be defined to you at a later
16 time. Again, there are two firearm specifications
17 in that count of the indictment.

18 Count 10 is a felonious assault, and it is
19 the same as Count 9; however, the victim in Count
20 10 is Clark Williams/Clark Lamar, and there are
21 two firearm specifications also.

22 Count 11 is a complicity in the commission
23 of a felonious assault. And that is the grand
24 jurors on their oaths further find that the
25 Defendants unlawfully did purposely aid or abet

1 each other in committing a violation of 2903.11,
2 which is a felonious assault, and that they did
3 cause serious physical harm to Omar Clark and/or
4 knowingly did cause or attempt to cause physical
5 harm to Omar Clark by means of a deadly weapon or
6 dangerous ordnance and that, again, is a firearm.
7 There are two firearm specifications in that
8 count.

9 Finally, Count 12 is a complicity in the
10 commission of a felonious assault. And that is
11 the same that I just read to you and the victim
12 in that count would be Clark Williams.

13 Now, I want to go back to just a little bit
14 of what we had discussed in the very beginning of
15 this case, back during jury selection, and we
16 talked about different issues. Most importantly,
17 the burden is on the State of Ohio to prove each
18 and every one of these counts in this indictment
19 and the elements thereof beyond a reasonable
20 doubt. That is what we did, and that is what this
21 was about. Bringing in the witnesses, having them
22 come in and testify and tell you what happened.
23 And through the testimony and the law that you
24 will get from Judge McDonnell, you can apply the
25 facts to the law to see if they match.

1 We talked to you about beyond a reasonable
2 doubt. You all agreed that you would hold us to
3 that standard and that standard alone. We all
4 agree it is doubt based on reason and common
5 sense.

6 As you heard from all the testimony this
7 is a case about common sense, this is a case about
8 what makes sense to you and what doesn't. We all
9 discussed how it is not beyond all possible
10 imaginary doubt because different parts of human
11 nature are subject to some doubt, and you all
12 agreed that you can hold us to that standard. You
13 said that you all could follow the law as it will
14 be given to you.

15 We talked to you a little about the
16 witnesses and about what type of witnesses that
17 you may hear from, what type of witnesses may be
18 around in this type of a situation involving a
19 homicide. When you listened to them testify, and
20 you go back and deliberate, you will have to
21 reflect on what some of these witnesses may have
22 had to gain by coming in and testifying, what
23 their demeanor was, how they testified, how
24 intelligent they were, how smart they were. From
25 that you will be able to determine how much of

1 that testimony you will believe, how much you
2 won't, and that will be for you to decide.

3 We also talked to you about us not being
4 able to go out and pick our witnesses. These are
5 people who were there at the time that the crime
6 occurred, these are people who have information to
7 provide. With all those points in mind, we are
8 going to take you back to November 16th into the
9 early morning hours of November 17th on Englewood
10 Avenue in the City of Cleveland that we have heard
11 so much about for the last two weeks and so much
12 that you have heard from all the different people
13 coming in and telling you what happened.

14 So I am not going to go on and on because
15 you heard it, you know, and you will be able to go
16 back and talk amongst yourselves collectively and
17 decide what happened.

18 In examining the testimony and evidence in
19 light of each and every count and each and every
20 element of each and every one of these counts of
21 the indictment, we have proved our case beyond a
22 reasonable doubt. The evidence was clear.

23 You first heard from the paramedic, the EMS
24 technician paramedic sponsor who arrived on scene.
25 He told you when he got there Omar Clark was still

1 alive, he was still breathing. He told you that
2 he was combative, he suffered multiple gunshot
3 wounds, and described it as a felonious assault.
4 Not dead at the time. Suffered serious physical
5 harm injury, and he had a number of gunshot
6 wounds. And that would establish strongly
7 because of the number of gunshot wounds all over
8 his body he had a serious physical injury to him.
9 He described that he saw him laying on the ground.

10 You also heard from Kristen Clark and Brett
11 Trimble, both representatives from the phone
12 companies. You heard Brett Trimble told you he
13 was a representative from Sprint. While he was
14 testifying I had him verify and authenticate the
15 phone record of this number, (indicating), and the
16 number being 296-5057, and he told you the
17 subscriber was a Nichole Hubbard. Then I had him
18 go through and identify each time there was a call
19 from that number, 296-5057, which he told you was
20 a cell phone, and I had him go through and
21 identify each time that number made a connection
22 with 513-7870. He could not tell you whose number
23 that was, but he took a highlighter and went
24 through and highlighted each and every one of
25 those calls. You will be able to take this back

1 and look for yourself, and you will be able to
2 examine the duration of the calls that he
3 testified.

4 He explained it is in seconds, all the
5 number of connections made, and the time the calls
6 started. He went through and counted the number
7 of calls and there was seven starting from 23:57.
8 He told you it is in military time, which would be
9 11:57 p.m. all the way through 12:46 a.m. He
10 told you that with these records these are calls
11 that connected. These are not any calls that went
12 into voice mail so you, too, will be able to go
13 through these and examine them and see for
14 yourself what that information was, the number of
15 times that number connected with 513-7870, and
16 determine who made the calls, which calls were
17 received, and which calls were made.

18 Then we learned from Kristen Clark through
19 State's Exhibits 140 and 141 the subscriber was
20 513-7870, Cordell Hubbard. She told you she was
21 employed by Verizon. She also had cell phone
22 records and she went through and indicated the
23 number of calls that 513-7870 connected with
24 296-5057. She also provided, which you will be
25 able to look at and review, additional information

1 that shows any calls that went into voice mail.
2 She testified that none of the calls that went
3 into voice mail matched up with the State's
4 Exhibit 141 that would have reflected any calls
5 that Nichole Hubbard on her 296-5057 would have
6 made to this phone call. None of those calls
7 would have went into voice mail and you, too, will
8 have this to take back and review for your
9 yourselves as to the information they did provide.
10 You will also see from those cell phone records
11 all the different times the calls were made and
12 were received.

13 You heard from Officer Desatnik who told
14 you he arrived on scene from the Sixth District
15 Police Department and he made the report as a
16 felonious assault because, again, when he arrived
17 on scene Omar Clark was still alive. He also told
18 you that he responded to a call of people beating
19 on a door of Clark Lamar's house, and you heard
20 that on the tape played for you about somebody
21 pounding on doors. It was later explained to you
22 it was Umar Clark, the brother, being devastated
23 about his brother's death trying to figure out
24 what happened and looking for Dude who lived at
25 that house.

1 You heard from Dr. Corcoran, the deputy
2 coroner, who ruled this case a homicide and told
3 you about the multiple gunshots on this person of
4 Omar Clark. You will be able to take all these
5 photographs back with you. I know that you had an
6 opportunity to look at them briefly, but you will
7 see all of the gunshots to his body. What you
8 have come to find out, all the gunshots all
9 throughout his body for a \$10 Wet cigarette. All
10 over his legs, his back. He told you a number of
11 those gunshots came from behind.

12 You heard from Curt Jones, the forensic
13 scientist, who is a supervisor of Trace Evidence
14 with the Cuyahoga County Coroner's Department. He
15 told you there were multiple defects on the
16 clothing of Clark Lamar. He will tell you there
17 was no trace metal detection on his hand. That
18 was a sign indicative of whether or not he held a
19 gun. He did not have any gun on him at the time
20 and, again, there are photographs that you did not
21 get to look at while sitting here listening to the
22 testimony but you will be able to review once you
23 go back and deliberate.

24 Then you heard from the fact witnesses, the
25 people who were there who were present at the time

1 this happened. You heard from Clark Lamar/Clark
2 Williams. Again, in listening to his testimony
3 and reflecting back on what he told you, you have
4 to consider what did he have to gain by coming in
5 and identifying Ru-el Sailor, as he said in his
6 own words, the killer, and Cordell Hubbard who was
7 there at the scene having conversation on the
8 phone. You have to consider what did he have to
9 gain. Whether or not he knew these people, what
10 did he have to gain by identifying them as being
11 there?

12 He told you how he spent the day with Omar,
13 his last day, November 16th of 2002, and he told
14 you he was with Nichole, Puddin, Maria Whitlow.
15 How at some point in the day they went over to
16 Puddin's house, they were drinking beer and
17 playing cards. There came a time when there was
18 some phone conversations Maria Whitlow had about
19 some party that was going to happen later on.
20 There came a time when they left, and there was a
21 point in time when they dropped Maria off and they
22 decided to look for a Wet cigarette which he
23 described to you as PCP embalming fluid dipped
24 with a cigarette.

25 He told you how Defendant Nichole Hubbard

1 calls Puddin on the phone to find some Wet which
2 is consistent with what Puddin told you because
3 she said she got a call from the Defendant looking
4 for where she could find this Wet cigarette.

5 Puddin was not able to get that information for
6 them so they saw some guy by the name of Nails or
7 Geronimo on the street. Here is when the dispute
8 started. Nichole gives Dude \$20 for the Wet
9 cigarette with the understanding that he will pay
10 her back. He tells you they all smoked off of it
11 and there came a time when they stopped and bought
12 some beer. And he tells you they get back to his
13 house on Englewood where he is staying, he goes
14 in, he decides that he is not going to give her
15 the \$20. He tells you he gave her 10 because she
16 smoked off some of that cigarette. She gets mad
17 at him and becomes hostile. He tells you at that
18 point in time she picks up her cell phone and says
19 she's going to call her brother. He says the next
20 thing he knows she's on the cell phone saying he
21 tried to play her.

22 She's on Englewood, and she describes this
23 blue and yellow Nautica jacket. He tells you she
24 leaves, and the next thing that happens the
25 Defendants, Cordell Hubbard and Ru-el Sailor, pull

1 up, get out of their car, and Cordell Hubbard
2 says, What did you do to my sister? He's talking
3 on the phone, pulls out the phone, and he hears him
4 say, Does he have a blue Nautica jacket on? At
5 this point in time he sees Ru-el Sailor with a
6 gun. What does he tell you? It's time to go, and
7 takes off running.

8 Ladies and gentlemen, you will get a
9 definition of prior calculation and design, which
10 is a part of aggravated murder, from the Judge.
11 But at this point in time we have satisfied prior
12 calculation and design.

13 There is a call placed to Nichole Hubbard's
14 brother Cordell. She gives a description and
15 tells him they F'd her up. Her brother arrives
16 on scene with Ru-el Sailor as that is a plan, a
17 scheme, a preparation for what is to come. It is
18 a complicity. They acted together. Ru-el Sailor
19 pulls up with Cordell Hubbard. One has a gun, the
20 other is on the cell phone. As you come to find
21 out with some other witnesses later on, the other
22 words are exchanged, If my sister says this is
23 you, your ass is out. One with a gun and one
24 standing there on the cell phone threatening.

25 He says he takes off running, hears shots,

1 he feels something graze him on his butt. As he
2 is running he comes to find out there was a mark
3 on him. He was being shot at. He returns home,
4 hides in his basement. There is a lot of arguing
5 going on that he hears. Later in time he comes to
6 view a photo array from the detectives. He
7 immediately picks Cordell Hubbard as the one being
8 involved in this. He sees another photo array,
9 and he came in and testified he did not know if
10 it was 3 or 5. Couldn't tell you through the
11 photo if it was 3 or 5, but when he came into
12 court he pointed to Ru-el Sailor as the killer
13 in this photo array which you will be able to go
14 back and look at yourself. No. 5 is the Defendant
15 Ru-el Sailor.

16 So through the testimony of Clark Lamar
17 aggravated murder as pertains to Ru-el Sailor and
18 Cordell Hubbard is satisfied. There is prior
19 calculation and design. They came with a gun as a
20 result of the sister's call. She set the wheels
21 into motion. 11 shots were fired. Not 1, but 11
22 shots. It was no accident, but a specific intent
23 to kill him. They all acted together.

24 We talked in voir dire about a bank
25 robbery. Just because you might be the driver of

1 the getaway car doesn't mean that you are not
2 responsible for the crime. You all have a
3 different role. Also from his testimony you
4 learned in a kidnapping he is being restrained
5 from leaving when they get out of the car and
6 start this argument. It does not mean that he is
7 able to leave the scene. He is being restrained
8 by these two Defendants, one of whom is holding
9 the gun. He takes off running.

10 There is also a felonious assault that is
11 established. He gets grazed by the bullet from
12 the gun. He did not receive any medical treatment
13 but he still suffered a wound because of a
14 firearm. Again, the testimony from the EMS who
15 arrived on scene and Officer Desatnik when they
16 first arrived on scene Omar Clark was breathing,
17 he was alive, and at that point in time they
18 included in their report it was a felonious
19 assault.

20 You heard from other fact witnesses.
21 Michael Duckworth came in and told you he heard
22 upstairs in his bathroom a male and one female
23 voice arguing from his location.

24 Then you heard from Puddin. Again, what
25 does she have to gain by coming in here and

1 testifying? She used to be best friends, or close
2 friends with the Defendant Nichole Hubbard.
3 Through her testimony you learned her
4 participation in the crime of murder because she
5 tells you about all these phone calls and she goes
6 through all the calls that were made. What you
7 learn in some of those calls, one, she's talking on
8 the other line with her brother. She told you
9 that the brother who she was talking to was
10 Cordell, and she also tells you she heard arguing
11 in the background and she's hanging up. They call
12 her again because they're concerned because of all
13 the crying going on and the Defendant says, He's
14 arguing with them, and she hangs up. They are
15 very important and consistent with the cell phone
16 records that you will be able to review, but they
17 were not consistent with the statement Defendant
18 Nichole Hubbard made to the detectives from
19 Homicide. You will also be able to review this
20 when you go back and deliberate. You will be able
21 to review this statement of the Defendant in light
22 of these cell phone records. That she made one
23 call, and she did not get through to him.

24 She also testified at another call she had
25 with the Defendant Nichole Hubbard Nichole told

1 her, My brother called and wanted to know if he is
2 still breathing. The next day she drives around
3 with her, and Nichole tells Puddin as they are
4 going out looking for Wet cigarettes, Don't
5 discuss this anymore. Don't discuss this anymore.
6 My brother says don't talk about it. Their
7 friendship dwindles, as she talked to you about,
8 and she tells you there was one occasion maybe in
9 January where the Defendant came over to her house
10 and the next time she saw her was at a bar when
11 there was an altercation and the Defendant Nichole
12 Hubbard jumps on her at the bar and says, You're
13 testifying against me.

14 So, again, her testimony shows you and
15 tells us about the participation of Nichole
16 Hubbard, about the participation of this
17 Defendant, (indicating), as pertains to a murder.
18 Without Nichole Hubbard, this would never have
19 happened. She made a cell phone call to her
20 brother Cordell, and there would only be one
21 reason she would call him. And everything was
22 cool once she called him and got through to him.

23 You heard from Larry Braxton and, again, he
24 further substantiates and supports the State's
25 case beyond a reasonable doubt, of aggravated

1 murder and complicity to commit aggravated murder.
2 He told you on a number of occasions when he sat
3 up here and testified, If I call your sister, your
4 ass is out. He will tell you this light-skinned
5 guy who had a cell phone, and tells us that, and a
6 number of times that you heard that. It
7 substantiates the theory of complicity, of aiding
8 and abetting, of assisting, inciting, cooperating
9 with and encouraging somebody else.

10 He told you that he saw the guy with the
11 gun, he is dark skinned, and describes the red
12 headband. You will see these photos that the
13 Defendants introduced, you will see they are
14 wearing red headbands in these photos. The red
15 headband that Larry Braxton described, that Mr.
16 Mack put on the board. He thought it was a red
17 jogging suit. Red headband, you will see the red
18 throughout the clothing, through the jacket,
19 throughout Cordell Hubbard's shirt. The red
20 jersey they are both wearing. He told you that he
21 is about five ten, dark skinned, short black hair,
22 and came in here and identified Ru-el Sailor as
23 the shooter and said that he recognized him
24 because he was right in his face.

25 You also heard from Tenitta Johnson who

1 told you she was driving down the wrong way on
2 Englewood, she told you how she was going slowly,
3 there was a crowd of people. Each person that you
4 heard from has a different view of what was going
5 on at the time. She's driving down the street,
6 she sees a group of people, she recognizes
7 Brandon, Larry, Joseph. As she's driving by she
8 sees the Defendant Cordell Hubbard in her face and
9 came in and identified him. She said she heard it
10 was some type of argument, she did not know what
11 they were arguing about but she heard it. It was
12 some type of an argument about a girl she thought.

13 She also identified Cordell Hubbard through
14 the photo array. This is the same photo array
15 that Clark Lamar/Dude was able to identify Cordell
16 Hubbard. You, too, will be able to see this photo
17 array when you go back and deliberate.

18 You heard from Brandon Gibbs. He used to
19 live on that street. Lives a couple streets over.
20 He said there are two guys that he knew, two guys
21 that he didn't know. He heard, Can't talk to my
22 sister like that. Then he said that he heard Dude
23 say, I didn't say anything to your sister. And he
24 heard, I'm about to call my sister. If she says
25 something differently, you're out. He identifies

1 the dark-skinned person as the one doing the
2 shooting.

3 You heard from Joseph Mayhand who said
4 there was an argument in the same type of words,
5 I'm going to call my sister. If she says it's
6 you, you're out. You heard this over and over
7 again from the witnesses from the State of Ohio
8 constantly. One with a gun, both had red on. He
9 was not sure about the man with the gun. He said
10 there was a guy on the phone, light skinned with
11 red, and he was stockier. Again, you will be able
12 to see the photos.

13 You heard from Detective Metzler, the
14 investigating detective from Homicide. He told
15 you all about the investigation. Over and over he
16 told you the details how he received the names of
17 the suspects, and once he received the names how
18 he compiled a photo array. First Nichole, then he
19 found out through further investigation the names
20 of Cordell then Ru-el. Then, again, once he
21 received the names of each of the Defendants he
22 did the photo array and presented it to each of
23 the witnesses as they were available and as to
24 when he was able to do it.

25 He also told you, and you heard it read

1 into the record, the statement of Nichole Hubbard.
2 As I previously talked to you about, you will be
3 able to see this and you will be able to read it
4 for yourself. We went kind of fast, but you will
5 have the opportunity to read through the statement
6 on your own.

7 You heard from the Defendants' witnesses.
8 Again, in looking at credibility what do they have
9 to gain? Well, Samuel Brown was a friend of both
10 for many years and look at what he had to offer.
11 He confirmed the two were together that night. He
12 confirmed they were together and wearing these
13 outfits, red headbands, described by some of the
14 State's witnesses. He also, very importantly,
15 discussed and testified about some cell phone
16 records and talked about what was going on at this
17 bar at Benjamin's at 152nd Street. He told you
18 what his cell phone number was, and he pointed to
19 a time on November 16th in the later evening hours
20 closer to midnight when he was calling the
21 Defendant Cordell Hubbard; however, they should
22 have been at the same bar at the same time at that
23 time. So when you go through and look at the cell
24 phone records, you will be able to see there were
25 calls made despite the fact they were to be

1 together at this bar that was smaller than this
2 courtroom. An alley-type bar. He told you they
3 were there for an hour, Cordell arrived at 11:30
4 and stayed until 12:45 a.m.

5 When you look at the cell phone records you
6 will see on November 16th you can count the number
7 of calls that were made on November 16th from
8 11:30 through 12:45, and there is about 20 of
9 them. At the same time he is supposed to be doing
10 karaoke on a stage going back and forth with some
11 other guy named Nettles while his cell phone is
12 going on and off throughout the entire time, but
13 we did not hear about him using the cell phone.

14 Then you heard from Miss McCreary, the
15 girlfriend of Cordell. Still his girlfriend. You
16 saw her demeanor, you saw her appearance as she
17 testified about her boyfriend. She told you she
18 loves him, loves him despite him fooling around
19 with other girls. You saw how she appeared
20 looking at him, talking about him, but she cannot
21 tell you where he was between those hours of
22 11:50, 12:45 a.m. because she was not with him and
23 could not tell you where she was.

24 Then you heard from Ru-el Sailor who came
25 in and told you, confirmed that he was with

1 Cordell Hubbard that night, and confirmed they
2 were wearing these outfits. This was his jacket,
3 dark leather jacket, the light jeans with black.
4 He confirmed these photos and told you they were
5 together the whole night. The clothes, the
6 outfits; all the same.

7 You heard from other witnesses who came in
8 and who could tell you that friends of Ru-el
9 Sailor, his family, they saw him in the morning
10 and they saw him the next day, but they don't know
11 where he was during that period of time.

12 So when you are looking at all this
13 testimony from all the witnesses collectively,
14 you are looking back together and rehashing all
15 the events that happened. No one from the State
16 of Ohio had anything to gain by coming in here and
17 pointing to these two as being the Defendants on
18 scene and pointing to Nichole Hubbard as the one
19 making the cell phone calls. They did not even
20 know them. Collectively they all saw different
21 parts. They were at different locations in the
22 street, driving in their car, and all saw
23 different parts of the events and all had
24 something to add. When you put all the pieces
25 together sort of like a puzzle, it becomes crystal

1 clear. Dude took \$10 from Nichole Hubbard, she
2 gets her brother. She's upset. She calls her
3 brother, she's been played. She sends him to
4 Englewood to take care of business. He arrives
5 on scene with Ru-el Sailor. They're together. By
6 their own statements of their own witnesses, by
7 Ru-el Sailor's own statement, they are together
8 that night. They confront the two, Omar and Dude,
9 make the cell phone calls, he's out, and the next
10 thing Omar Clark is dead. Shot 12 times all over
11 a \$10 Wet cigarette.

12 From these events there is prior
13 calculation and design, there is the plan, there
14 is the scheme, there is the preparation. They
15 arrived with the gun, they have been called and
16 told where to go. You're out. All of the words
17 used shows the intent. It is aggravated murder.
18 Purposely. 12 shots. Not 1, but 12 all over his
19 body.

20 You heard Jermaine Kidd, what he told you
21 Omar Clark said before he died. He said, I'm out.
22 When other witnesses said, Where you been shot he
23 says, All over. Shot all over, over a \$10 Wet
24 cigarette. It's complicity. They all acted
25 together. This crime could not have happened

1 without Nichole Hubbard, without Ru-el Sailor, or
2 Cordell Hubbard. They all acted together. They
3 incited, they carried it out together, they
4 cooperated, they aided and abetted, and you will
5 get that instruction from the Judge. They all
6 acted together with regards to the felonious
7 assault and kidnapping and the murder charge as
8 pertains to Nichole Hubbard, and Nichole Hubbard
9 with Ru-el Sailor and Cordell Hubbard in the
10 commission of a felonious assault and a
11 kidnapping.

12 Use your common sense, as we stated from
13 the very beginning. Back to the very beginning.
14 The same common sense you use every day, the same
15 common sense we talked about in any disputes that
16 you have to settle whether it is at work, whether
17 between your kids, and you listen to the
18 instructions Judge McDonnell gives you and apply
19 it to all the testimony that you heard for the
20 last two weeks.

21 Nichole got burned, she called her brother,
22 they take care of business. Omar Clark is dead.
23 When you go back and deliberate and go through all
24 the testimony and all the exhibits that you will
25 see, I'm confident that you will find the truth

1 and justice in this case and convict each and
2 every one of these Defendants of all the crimes
3 charged in this indictment.

4 Thank you.

5 THE COURT: Mr. Watson, on behalf of
6 Defendant Cordell Hubbard.

7 MR. WATSON: Thank you, your Honor.

8 - - - - -

9 CLOSING ARGUMENT ON BEHALF OF DEFENDANT CORDELL HUBBARD

10 MR. WATSON: Good afternoon, ladies and
11 gentlemen.

12 THE PANEL: Good afternoon.

13 MR. WATSON: You have listened here to the
14 evidence that has been presented for approximately
15 two weeks, and you have heard a lot of witnesses
16 who have testified in this case, a lot of exhibits
17 that have been introduced into evidence for your
18 review and consideration in this case as relates
19 to the guilt or innocence of Cordell Hubbard.

20 When I talked to you guys in voir dire we
21 talked a lot about presumption of innocence, we
22 talked about proof beyond a reasonable doubt, we
23 talked about credibility of witnesses. All of
24 those things are things that you can consider in
25 your role as a juror in this case to come to a

1 fair result no matter if it is guilt or innocence.

2 Analyzing this case and breaking this case
3 down I think you can break it down into three
4 major components. Those components are
5 identification, telephone calls, and the police
6 investigation in this case. Looking at all those
7 aspects, which are part and parcel of the State's
8 case, are flawed. Even if you were to consider
9 each and every part separately, or as a whole, you
10 will find their evidence should not satisfy you
11 that Cordell Hubbard is guilty of the charges as
12 outlined by the prosecutor in this case.

13 The State's first star witness is a person
14 by the name of Clark Williams. We got a chance to
15 get to know Clark Williams who also went by Clark
16 Lamar who also was referred to as Dude. We find
17 this person, as I said in opening statements, has
18 an 11-cycle criminal history from offenses of drug
19 trafficking, to possession of drugs, having a
20 weapon under disability, escape, that he had been
21 to prison by his own admission 7 times. Even
22 beyond this we have Clark Lamar/Clark Williams
23 that during the period of time when this event
24 occurred that he consumed alcohol, he used PCP,
25 and he used marijuana. He further told us that

1 since 1985 he's done as such; used PCP. In '88
2 he graduated to cocaine and marijuana. Why is
3 this important? This is important because, ladies
4 and gentlemen, you are being asked to rely on his
5 testimony which is identification testimony in
6 this case.

7 Let's look at his identification testimony
8 in spite of what we all know about Dude or Clark
9 Lamar. What we know, ladies and gentlemen, when
10 the first police officer who arrived on scene,
11 Officer Desatnik, when Officer Desatnik told us,
12 and it will be in Joint Exhibit 1, you can take a
13 look at it, is that there was a dispute with a
14 female and that dispute was with Omar Clark. We
15 further know from that description that he
16 identified two people who were suspects. He gave
17 a description of five eight, medium brown skin,
18 mustache, slight mustache, short haircuts, ranging
19 from 200 pounds apiece, and they look like
20 brothers. What we know, ladies and gentlemen, if
21 we look at both Cordell Hubbard and Ru-el Sailor,
22 they do not bear any resemblance as brothers.
23 They don't bear resemblance.

24 Later on in that testimony Clark Lamar/
25 Clark Williams said, Now I remember. Now he has a

1 goatee because that was not included in his first
2 description, and that description would not be
3 consistent with the photo array because you see
4 Mr. Hubbard has a beard or small goatee under his
5 chin. We talked about power of suggestion, how
6 someone's description will change.

7 He told us in this courtroom, I'm sure all
8 of you remember him testifying, he said the person
9 was, My same height and he was bigger than I was,
10 and he was medium complexion. I asked him, I
11 said, looking at State's Exhibit 131, can you tell
12 us do any of the photographs themselves bear any
13 resemblance to Cordell Hubbard? He said, No,
14 these people do not resemble him at all. His
15 description. I said, You said that he was medium
16 brown skinned? He said yes. I said, Can you
17 agree that he is light skinned or light brown
18 skinned? He said yes. I said, That is different
19 than medium brown skinned. He said yes. I asked
20 him to look at the photo array and said, Doesn't
21 the photo give the appearance that he is brown
22 skinned and that his appearance before you is that
23 he is lighter skinned? He agreed with me. He
24 said, Yes; that's true. Because of that fact we
25 know that his description or identification grew,

1 and it grew because, ladies and gentlemen of the
2 jury, what we do know is Umar Clark had influence
3 over this investigation and the people that he
4 spoke to.

5 MR. THOMAS: Objection.

6 THE COURT: Overruled.

7 MR. WATSON: We know from the 9-1-1 tape
8 broadcast there were two complaints coming out of
9 10622 Englewood. That the first complaint was
10 given by a female by the name of Harriett Brooks.
11 She tells us there are men, three or four men,
12 that are at my door, they are wearing dark black
13 clothing, they have firearms. You heard the
14 stressed intention of her voice. We knew at least
15 from Detective Desatnik by the time he arrived
16 there there were relatives of Omar and Umar
17 present in the home, and they were acting
18 surreptitiously or secretly in that Clark Lamar
19 was being evasive. I believe that is the term
20 that he described, and even thought it was very
21 suspicious.

22 There was a further call on the 9-1-1 tape
23 calling from the same house, ladies and gentlemen.
24 A male voice by the name of Maurice. Through that
25 voice he said the same people who were doing the

1 shooting, they are back, and this is at 4:59 which
2 is several hours later. Which goes to my mind
3 something is amiss here because the prosecutor and
4 the State of Ohio, they are suggesting to us they
5 are saying, well, this disturbance is related to
6 Umar Clark knocking on the door by himself and
7 entering the premises. Are we supposed to assume
8 that because the State of Ohio tells us this
9 that it could be the case? Did they present to
10 you evidence that that is what it was about and
11 that the descriptions given on the 9-1-1 tape were
12 separate and apart of what happened here?

13 The prosecutor tells us that there were no
14 guns involved. There was no one knocking on the
15 door with guns trying to get in. I thought what
16 was very interesting was that when I asked the
17 detective, I said, Well, did you hear the part
18 where there was a response? Was there a response
19 to the complaint made by 10622 Englewood? He
20 said, Well, I heard it. I said, Well, what is
21 your reaction to it? We never played this for the
22 jury, but in that tape when the police officers
23 arrived to that complaint no one was there. So
24 what that suggests to us, ladies and gentlemen,
25 the persons that were there were gone, and when

1 Officer Desatnik tells us there were other
2 relatives that were present inside the home
3 talking with Clark Lamar, those are two separate
4 events. I want to play this brief portion to you
5 that you did not hear in court.

6 MR. THOMAS: Objection. May we approach?

7 THE COURT: All right.

8 - - - - -

9 (Thereupon, a discussion was had
10 between Court and counsel outside
11 the hearing of the jury and off the
12 record.)

13 - - - - -

14 (Thereupon, the following proceedings
15 were had in open court:)

16 - - - - -

17 (Thereupon, the 9-1-1 tape was
18 played to the jury.)

19 MR. WATSON: I think that is a very
20 critical point, ladies and gentlemen, because what
21 we know from Officer Desatnik is that when he did
22 arrive shortly thereafter, and I think he posted
23 his time somewhere 12:45 that he was present,
24 other people were there on the premises when he
25 conducted his interview with Clark Lamar. So that

1 suggests to us the persons that the State of Ohio
2 alluded to were those people, the same people who
3 they now say were inside the house talking with
4 the family members of Harriett Brooks and Lonnell.
5 Are we simply supposed to adopt or accept what
6 they told us even though they have not prepared
7 any witnesses to say, yes, those people at my door
8 did not have firearm, were not wearing dark
9 clothing, and were not carrying firearms when they
10 were banging on Miss Brooks' door?

11 Now, when Clark Lamar tells us about the
12 manner in which this happened, ladies and
13 gentlemen, I think it's very, very important to
14 listen to certain parts of what he tells us. The
15 prosecutor asked and I so asked, let's think about
16 what is common sense. We know from Clark Lamar he
17 tells us that two men jumped out of a car, a red
18 car, and he is confronted by someone who later he
19 identifies as Cordell Hubbard. And the person
20 comes up to him and says, Why you messing with my
21 sister? Why you F'ing with my sister? That sends
22 a red signal if someone calls you and wants to
23 interview you on their behalf to see what the
24 problem is, isn't the first thing a person is
25 going to say is, Hey, are you Dude? Are you Omar?

1 Wouldn't that be the first thing they would come
2 up to that person and say? It doesn't make sense.

3 From his testimony he tells us at the end
4 of the conversation before the shots were fired he
5 says, I'm going to call my sister, and if you have
6 this Nautica coat, you're outta here or, your ass
7 is out. Now, if that was the last statement that
8 was said during this conversation what is he
9 arguing with a person that he doesn't know the
10 identity of? Doesn't make any sense because the
11 stories do not jibe through their witness.

12 We heard a lot about identification, and
13 the reliability of identification. We know when
14 we evaluate someone's identification testimony
15 we have to look at all factors involved. Which
16 brings me to a very important point about Tenitta
17 Johnson. Tenitta Johnson came in and testified
18 and said that he was the unfamiliar face on 105th
19 and Englewood.

20 Now, we know she was confronted with the
21 9-1-1 tape while she's perceiving the event,
22 ladies and gentlemen. She cannot ascertain
23 whether or not a person is actually getting shot,
24 or if gunshots are being shot in the air which
25 suggests to us, ladies and gentlemen, that she was

1 not as close to the event as she may suggest
2 because she tells us she said, Mr. Watson, I
3 didn't say those two people that I could identify
4 them, which was true, she said the unfamiliar face
5 that is involved in the argument. Wouldn't a
6 logical step when you are talking to the radio
7 dispatcher be to say, look, there is one guy, he
8 has this height, this weight, this build.
9 Arguably he is one of the guys that left in a car
10 because he was unfamiliar and I knew all the other
11 people.

12 She told us, ladies and gentlemen, she
13 thought she made two calls and she explained the
14 whole scenario. We know, ladies and gentlemen,
15 she only made one 9-1-1 call. We know that
16 because all 9-1-1 calls are recorded. You talk to
17 the dispatcher and they are recorded. She was
18 wrong. She told us initially that she said I
19 didn't want to get involved in all this. I didn't
20 deal much with the police. They had to seek me
21 out, they had to find me. Lo and behold, what did
22 we find in the field report is that she is one
23 of the reporting persons. What we find is that
24 the description is not what she described in
25 court, but the name of the person along with Clark

1 Lamar they gave the same and similar description
2 and nothing is noted in that report of this
3 light-skinned person. Where is it? It wasn't in
4 his report, and we know and police officers are
5 going to interview people, they get phone numbers,
6 they get employment, where you work, where your
7 phone number is. Magically, we don't get a
8 written statement from her until two days before
9 the man's trial. I ask, what is going on here?

10 We were told by Mr. Metzler, Well, Mr.
11 Watson, we're so busy, and we could not locate her
12 and we've got a heavy plate. But I'm convinced on
13 December 1st when we took her statement on
14 December 1st she was able to identify your client.
15 And we have to accept his word for that because
16 there is nothing memorializing that. And
17 certainly her statement does not lend itself to
18 the idea she ever picked out a photograph before.

19 We talked about the idea trying to
20 corroborate what has been done. That is
21 fundamental police work. I asked Detective
22 Metzler, I said, Is it customary to have the photo
23 array and the written statement so there is no
24 problem and there is no dispute in the written
25 statement? Yes, it is customary. Now all of a

1 sudden he does it with two witnesses. He does it
2 not with one witness but two witnesses. Ask
3 yourselves, what is going on here? What type of
4 investigation is going on here in this case where
5 you have witnesses purportedly making
6 identifications without accompanied written
7 statements and all we can rely on is the
8 detective's word. He says, Take my word for it.

9 Now what we further know, and I think it's
10 a theme in this case because the witnesses, even
11 though we can agree this argument took place maybe
12 in ten minutes, that the only thing that "the
13 witnesses who observed the event" was that a
14 sister's reference was made, that Omar was
15 probably familiar with one of the persons that
16 were present, and the fact that I am going to take
17 him out or something if that's you. I suggest to
18 you, ladies and gentlemen, if those are the only
19 three things that stick out in your mind, that is
20 working the power of suggestion.

21 We know that Umar and his family asked Larry
22 Braxton, Who shot my brother? Can you describe
23 him? He gave Umar a description. He said, Well,
24 that sounds like that might be Cordell. But this
25 is after the fact, after he's talked to Clark

1 Lamar/Clark Williams about this. Then he had
2 to give some type of explanation of what happened
3 here. I'm suggesting to you because of all this,
4 surreptitious under-the-cover type conversations
5 that we don't know about this. The State of Ohio
6 doesn't tell us what they are all about. How can
7 we be sure it was about Nichole? But what we do
8 know is that once Cordell Hubbard's name is used,
9 then the investigation centered on that and not
10 the reasonableness of his testimony.

11 Detective Metzler told us -- I asked Clark
12 Lamar, I said, Mr. Williams, can you tell us why
13 wasn't the police ever directed toward the
14 driveway or the house so that some evidence could
15 be confiscated? You won't see any exhibits, you
16 won't see any information, you won't see any
17 cooperation, any police work relative to Detective
18 Metzler and what Detective Veverka had done that
19 they looked to confirm that Clark Lamar was even
20 shot at. They didn't do it, ladies and gentlemen.
21 But then, again, we have Detective Metzler. Again
22 he tells us, Mr. Watson, we saw the discoloration
23 on his buttocks. What any police officer would do
24 is take a picture. He would look at his clothing.
25 That wasn't done here. Did they believe him then,

1 or do they believe him now? There are a lot of
2 things that were not done by the Cleveland Police
3 Department in connection with this case.

4 Now, I want you to look at these telephone
5 calls because these telephone calls are important
6 in this respect. Remember when Puddin testified
7 in this case, Miss Taylor? She told us that
8 there was a three-way call. I want you to look at
9 12:05. That is the call waiting mechanism that is
10 connected with that phone call. She told us that
11 when she beeped in with Nichole she was told that
12 they were arguing with the boys or something to
13 that effect. But we know that that call waiting
14 call that happened again did not occur until
15 12:33. And you will be able to look at their
16 exhibits to correlate the telephone calls because
17 it does not fit in the time line.

18 You listened to the tape of the 9-1-1
19 calls. What we do know is that the call, the
20 three-way call, you will see from State's 141 and
21 State's Exhibit 140 that that call, three-way
22 call, was made at 12:05. That is important
23 because the number that was called according to
24 Puddin was that they were arguing. So when the
25 detective suggests to you this happened at 12:15

1 they know they have a problem, ladies and
2 gentlemen, because the witnesses who testified in
3 this case said that this happened very quickly.
4 This was not 20-minute interval argument because
5 if it was a 20-minute argument everybody would
6 have been on the street. This happened in 4 or 5
7 minutes so they can't reconcile that call with her
8 because they know that the homicide took place
9 based upon the 9-1-1 call at 12:26. So that means
10 it happened or occurred shortly before. And you
11 listen to the tape, and you can tell from the
12 9-1-1 call it was very recent. We know that if
13 she says that he's arguing with them at 12:05, if
14 we are to believe her it does not fit in that
15 time.

16 Prior calculation and design, ladies and
17 gentlemen. It doesn't fit. That is why they want
18 to change it. That is why this detective
19 volunteered and said no, no, no. The other
20 detectives told us that this happened at 12:15. I
21 want you to look at those records closely because
22 there are going to be additional phone calls that
23 were shown other than the phone calls that were
24 made by the State of Ohio isolating just Nichole's
25 calls and Cordell Hubbard's calls. What they

1 didn't tell you, ladies and gentlemen, during that
2 time before the calls they talk about, that there
3 were several calls that were made between Cordell
4 and Nichole. Here we have a call up to 6:25.
5 This is the proceeding day of the homicide there
6 is a call made to Nichole from Cordell at 6:25.

7 There is another call that is at 6:50 that
8 was made by Cordell to Nichole also which is not
9 depicted on my exhibit because there are some
10 exhibits with some phone numbers that I want you
11 to look while you're there.

12 You will examine that there was also a call
13 made from Nichole to Cordell at 6:51, 6:52, and
14 7:02 which are calls that are in rapid succession.
15 They didn't have anything to do with a homicide
16 but I thought what was very interesting when Miss
17 Taylor told us she wanted to go to the party and
18 she mentioned the 4U2B club. I think it all ties
19 in, ladies and gentlemen, because those phone
20 calls were probably relating to whether or not
21 they would go out or not, and they would suggest
22 they were plans that were made.

23 MR. THOMAS: Objection.

24 THE COURT: Overruled.

25 MR. WATSON: The prosecutor did not isolate

1 those telephone calls because it did not fit in
2 his scenario of what he thought the relevance of
3 the calls were. We also know, ladies and
4 gentlemen, in the statement, and the State made a
5 big deal about it, well, we knew that Samuel Brown
6 had made telephone calls to Cordell, we know that
7 Ru-el Sailor made telephone calls to Cordell
8 Hubbard, but because they're not exact as relates
9 to those times does that mean that what they are
10 saying is not true? Their witnesses were unable
11 to tell us with any specificity what times were
12 called.

13 They asked Miss Taylor when was this call
14 made. Particularly in cross-examination she
15 basically said these calls were 15 minutes apart.
16 She told us, I don't know what the times are. But
17 by the same tone the State wants to question the
18 witnesses who are telling us that they were
19 together at The Benjamin Bar and they were
20 together at the 4U2B club and they were together
21 at St. Aloysius.

22 The prosecutor showed you some photographs
23 and we present them as exhibits because we contend
24 and we believe that they were at St. Aloysius.
25 The prosecutor wants to probably make a big deal

1 about the headband and the red. Why would the
2 Defense present this to us? Ladies and gentlemen,
3 it's not like Detective Metzler suggested that we
4 are trying to hide something from you. We believe
5 that they were, in fact, at St. Aloysius and that
6 those pictures were taken. What adds to our
7 belief, our case, is that we know that Brandon
8 Gibbs, that Jermaine Kidd, Larry Braxton, Joseph
9 Mayhand did not pick my client as being on
10 Englewood. And those persons, even though their
11 descriptions vary among themselves, they were
12 closer than Tenitta Johnson.

13 So what does that tell us? That those
14 identifications we can't rely on. We cannot rely
15 on them on this case because the circumstances in
16 which the identification was made were
17 questionable and highly dubious how they were
18 gotten.

19 Now, the State of Ohio tells us that these
20 identifications are strong enough for your
21 reliance. But what we do know is that we have
22 descriptions that vary among the color scale, the
23 skin complexion scale, the hair scale. Now, they
24 were asking questions about these hairbands. What
25 I recall Larry Braxton telling us, it could have

1 been a headband, or it could have been a visor, or
2 some type of hat but he cannot distinguish which.
3 Now, we know that that is a popular type of head
4 gear if, in fact, his identification is correct.
5 But we have to say that his identification is
6 questionable because he cannot make an
7 identification of Mr. Hubbard.

8 We heard from Clark Lamar, Well, I can't
9 identify the second guy but when we get in court
10 I'm going to identify the suspect with the gun.
11 We are going to do that because he's there.

12 MR. THOMAS: Objection.

13 THE COURT: Overruled.

14 MR. WATSON: We are supposed to take his
15 word for it.

16 Now, the State of Ohio tells us that even
17 if you accept their version, which we don't, that
18 they made their case in complicity. How did they
19 do that? Their own witnesses say the dispute
20 between the two guys became Omar and the person
21 with the gun. And that Cordell Hubbard, if you
22 believe it, which we don't, is in dispute with
23 Dude. They have not presented any evidence,
24 ladies and gentlemen, about their complicity
25 theory other than a convoluted version there was a

1 solicitation made by the sister and the sister
2 sent her brother down there, but they don't have
3 any contents of any conversation. Did they make
4 their case? I don't think so.

5 You promised us when we asked you that
6 despite the fact of what type of case it is that
7 you would hold the State to their burden of proof
8 in this case. That they would prove it. If they
9 make the charge, they shall prove it. And it
10 hasn't happened here, ladies and gentlemen. When
11 you carefully examine the phone records, which I
12 am imploring you to do, you will find that the
13 calls that were made and their witnesses who claim
14 that Nichole told them that something was going on
15 with their brother, it doesn't fit in the theme or
16 the time line in their case.

17 When you examine all the evidence, ladies
18 and gentlemen, you will find that they did not
19 make their case. And, invariably, in any case
20 which you are talking there are some points that
21 may have been left out because the powers of
22 recall and memory, they are limited. But it
23 wasn't because I didn't want to address it. It's
24 just that I just didn't think about it at the
25 time.

1 When you go back in the jury room, I want
2 you to carefully consider the evidence in this
3 case and that this man's, (indicating), life is at
4 stake. And I'm sure when you have satisfied
5 yourselves that you have done that, you will come
6 to a fair result.

7 Thank you very much.

8 THE COURT: Mr. Mack, on behalf of the
9 Defendant Ru-el Sailor.

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11 CLOSING ARGUMENT ON BEHALF OF DEFENDANT RU-EL SAILOR

12 MR. MACK: Judge McDonnell, Mr. Thomas,
13 Miss Clancy, Mr. Watson and Mr. Willis and, of
14 course you, ladies and gentlemen of the jury,
15 again I started out earlier Friday making a
16 complete apology for making a donkey out of
17 myself. I apologized to this Honorable Court
18 because, again, it should not have happened in the
19 court and I acted very unprofessionally. Needless
20 to say when I was doing voir dire I always give
21 the example, if I do something stupid see me after
22 court. Needless to say, I never thought that I
23 would have to tell you that I made a big mistake
24 and, again, I ask you if you take that into
25 consideration please don't hold it against my

1 client. Really. Tell me, write me a letter.
2 I'm in the telephone book too.

3 Ladies and gentlemen, when we started out
4 this particular case one of the things that I
5 asked you to do is to look at the witness stand
6 and I asked you to consider the witnesses that
7 would come into court. And when I indicated
8 during the voir dire the witnesses would come in
9 and they would supposedly give their God-given
10 testimony what they saw, what they heard on that
11 particular night of this particular incident, at
12 that time I indicated to you as well you are the
13 sole judges of the credibility or the
14 believability of all witnesses. And that still
15 remains true. I'm going to say some things but,
16 again, it's you who will go back in the jury room
17 and you will be the ones who will decide what are
18 the facts in this particular case.

19 We started out, ladies and gentlemen, I
20 also told you during the voir dire that it is not
21 the quantity of the evidence that is coming into
22 this particular courtroom. If you look at it, the
23 State has over a hundred exhibits. But it's not
24 the quantity of the evidence, it is the quality of
25 the evidence that is coming in in this particular

1 case. Again, I suggest to you that you take a
2 look at what is the quality of the evidence. And
3 after you look at all the evidence and view all
4 the evidence can you truly say in your hearts that
5 the State of Ohio has proved its case beyond a
6 reasonable doubt?

7 Now, as I stand here I only represent Ru-el
8 Sailor. As I have indicated before, that is my
9 responsibility and that is whom I am addressing
10 mostly in this particular case. You will make
11 your decision as to the evidence in this case, but
12 just did they prove his case beyond a reasonable
13 doubt? The State of Ohio stands up and says, Who
14 has the motive to get anything out of this
15 particular case? But, ladies and gentlemen, let's
16 look at this. There are two sides in here.
17 Remember during the voir dire I said there are
18 always two sides to a game. Sure enough the
19 Defendants are there, but just because they are
20 sitting there -- remember, the Judge told you the
21 indictment is just to inform you that they have
22 been charged with a particular crime. It is not
23 evidence of itself.

24 There are motives in this particular case
25 from both sides. That side over there,

1 (indicating). And, again, I sympathize with them
2 and know they look at me because I'm on the other
3 side but I sympathize with their loss on that
4 particular night. And they do have a motive as
5 well. Their witnesses who came into court were
6 all very good friends. They all testified they
7 were friends gone back from ten years, some were
8 kids that grew up together. They want to see the
9 persons that did this crime out on that particular
10 night. So, yes, they are overly zealous.

11 So, again, we ask you to use your common
12 sense. What does everyone in here have to gain
13 from both sides? Again, I ask you to think about
14 this. There will be biases that will be coming,
15 prejudices coming in, and there will be sympathies
16 coming in, but you will not -- you will have to
17 set that aside. You cannot use that bias,
18 sympathy and prejudice.

19 It was all about a \$10 square, as the State
20 has indicated and so forth. Yes, that is supposed
21 to be put out there and, yes, that is supposed to
22 get you to have some bias against the Defendants
23 because it is a senseless thing. Yes, it is, but
24 that is not your job. Your job is to determine
25 whether or not by the facts and the evidence and

1 the explanations that have come in this particular
2 court, have they proved their case beyond a
3 reasonable doubt as far as Ru-el Sailor is
4 concerned? I would say to you when you start
5 thinking about motive, yes, there is motive on
6 both sides, ladies and gentlemen.

7 Now, we talked about suggestibility. Mr.
8 Watson talked to you about suggestability. He
9 cross-examined and talked about suggestion, the
10 power of suggestion. That someone can put a power
11 of suggestion into your head. Let's take a look
12 at this, ladies and gentlemen, even before I go
13 into my close. I took the time, I tried, as bad
14 as my writing is, to indicate to you about the
15 credibility of the identification process in this
16 particular case. Now, regardless of what time of
17 day or night, or how far you are from me, if I am
18 two feet away, five feet away, or ten feet there
19 should be, as I said, some inconsistencies in the
20 identification. There was only one shooter. If
21 you believe the State's case there was only one
22 shooter so there cannot be any doubt as to
23 multiple shooters. If you had multiple shooters
24 you would have multiple descriptions who was there
25 that night and who did the shooting. We know

1 there is only one person.

2 So tell me, ladies and gentlemen, when you
3 go back and if you really look at the
4 identification process, because you've got to take
5 a look at some factors to see that, did the
6 persons really have an opportunity to see that
7 night? What were they concentrating on? And so
8 forth. What was the distance they were when they
9 saw what they saw? And, again, what is the
10 lighting? How can you tell? And, again, if I am
11 wrong, one, two, three, four, five, six -- you
12 have six different witnesses the State brought in
13 and the State is trying to say on this particular
14 case that it is the same shooter.

15 Now I suggest to you, ladies and gentlemen,
16 Dude is the one that is the closest to the action
17 on that particular night, and he is the one who
18 has the idea who can see better. There are two
19 different descriptions. Once he says the person
20 was light skinned, and then he testified with the
21 patrolman that he was brown skinned. And if you
22 say brown skinned or light skinned, ladies and
23 gentlemen, there is no way in the world that you
24 can determine or you can sit there and say -- and
25 it is relevant in an African-American society that

1 skin tone is very, very distinguishable. It is
2 not a mystical thing as to whether you are light
3 skinned, whether you are brown skinned, or whether
4 you are dark skinned, ladies and gentlemen. You
5 are either of the three.

6 Here we go. Dude says brown skinned, and
7 earlier he had testified light skinned and they
8 looked like brothers. Now, that is the same
9 shooter. This is the shooter. Then we cannot
10 have any conflict or any disagreement. And you
11 heard me specifically ask him whether or not he
12 could identify the person. If you remember I
13 took the transcript, I went up to him, ladies and
14 gentlemen, I read back the question because I
15 didn't want it to have any influence in what he
16 had said on another occasion. I asked the
17 question, and this was asked by Mr. Thomas, Do you
18 remember the color of the car? He said, No,
19 sir. Do you remember the other person that
20 arrived with the person that is talking to you?
21 His answer was, No, I do not remember. Then I
22 asked, How are they dressed? He said, T-shirts
23 and jeans. He doesn't remember.

24 The Judge will instruct you. That was the
25 first testimony that this person gave on this

1 particular night. Don't forget this testimony was
2 given or description given to Detective Metzler
3 on or about November the 18th. This is the very
4 next morning after that. This is how he describes
5 the person and everything as brown skinned, but he
6 did not remember what their faces looked who.

7 We talk about motive. What is his motive?
8 His motive is for Umar Clark, who was his good
9 friend. He comes in here, and the Judge will tell
10 you, are their testimonies any different on an
11 earlier date than their testimony they give at
12 trial? He came in here at trial and tried to say,
13 oh, after all those months I now can be sure
14 without a doubt that it is Ru-el Sailor. And
15 despite trying to get around what he said earlier,
16 he tried to take the testimony and he tried to use
17 it and manipulate it to fit that man over there,
18 (indicating), ladies and gentlemen, to fit it
19 because the motive is we can't let anybody come
20 out of Englewood do this and do this to my friend
21 and get away with it. If he was sitting there at
22 that table with Mr. Hubbard, then he must have
23 done it because the police put him there.

24 I will get to the police testimony in a
25 moment, okay? Again, that is one person who

1 describes the shooter. And let's take another
2 look at somebody else.

3 Tenitta Johnson comes in, she sees only one
4 person there. She doesn't see my client there.
5 Joseph Mayhand, he was a nice young man that sat
6 right there. He told you the guy was light
7 skinned. We're only talking about one shooter.
8 Light skinned. We went through that. He said
9 light skinned, then he said he had on a red
10 jacket and I do believe a red shirt. I ask of
11 you, and I'm jumping way ahead, you will have
12 these exhibits, Defendant's Exhibits M, N, I do
13 believe there is an O, you look on here and you
14 tell me on this particular night if my client had
15 anything red on there.

16 Now, Mr. Mayhand is not the only person
17 that said the person had on a red jogging suit, if
18 you recall. Jermaine Kidd said that the person
19 who was there also had on -- he said the gunman
20 had on a red jogging suit. My client did not have
21 on a red jogging suit. Still talking the same
22 gunman? Do we have multiple gunmen, or still
23 talking about the same gun?

24 Brandon Gibbs was also there. The
25 over-zealous try to get somebody to put somebody

1 there, Mr. Gibbs. He is closer than Mr. Braxton
2 is. He says, Wait a minute. The guy is light
3 skinned. I think he changed it some down the road
4 and said now the gunman is dark skinned. What is
5 so curious about his testimony? He said the
6 gunman was dark skinned, and in all black, and he
7 was the one with the cell telephone talking, Did
8 you do something to my sister? Ladies and
9 gentlemen of the jury, how many brothers does
10 this person have out there on that particular
11 night? Are we talking the same shooter?

12 Let's move on, okay, to Larry Braxton.
13 Larry Braxton comes in on the very next day after
14 this happened. Jermaine Kidd and Larry Braxton
15 were talking to Umar Clark the very next day. The
16 strange thing that came out to me when I asked him
17 on the stand, I said, When you gave a description
18 to Umar of the person who was the shooter, what
19 did he say, ladies and gentlemen? He said it
20 sounded not like my client. I think you all
21 recall who he said it sounded like. So, ladies
22 and gentlemen, if it sounded like that person that
23 he was describing, that person was not dark
24 skinned. He said the name of that person was a
25 light-skinned person.

1 So ladies and gentlemen, it all starts out
2 with a light-skinned shooter who looked like a
3 brother but by the time it got here it came out he
4 was a dark-skinned person. They saw him sitting
5 there and wanted to make this happen.

6 What was the other thing that was very
7 strange about this testimony and the credibility
8 of the witnesses? Dude who was there, who was
9 right in the midsts of the situation, what did he
10 tell you about the lighting? He told you it was
11 dark out. If you recall, I asked him on the
12 witness stand if he can describe the lighting.
13 Question: Was there any street lights in an area
14 you were standing? His answer was: No, it was
15 dark. It was real dark. Because you go down
16 Englewood there are a lot of trees on Englewood.
17 So if it was street lights, the trees would have
18 blocked them out. Ladies and gentlemen, who are
19 you going to believe? Dude who is there, who
20 tells you it's dark, then the people who get
21 together afterwards in the neighborhood on the
22 street and all of a sudden everybody else that
23 came in here says it's light. Let there be light
24 out. I can see everything. I can see mustaches
25 that a person had on pencil thin. I can see

1 weaves in a person's hair. It was that light out
2 there.

3 Now ladies and gentlemen, again, we ask
4 you to think about your common sense and ask
5 yourselves whether or not at that particular time
6 anyone can really see any weaves in anybody's hair
7 at that particular time. I suggest to you they
8 didn't.

9 The other thing that really got me, I could
10 not do anything about it, when I asked Detective
11 Metzler how do you come up with Ru-el's name he
12 says, there was some witnesses or something. You
13 recall it. I said how do you get it, because we
14 have no way of checking. What did he tell you?
15 Detective Eugene Jones came up and said a
16 confidential informant told him. Ladies and
17 gentlemen, they had a trial date back in March,
18 they were able to go out and get everybody else's
19 statements and the other witnesses in March two
20 days before Cordell's trial, and my client was not
21 even indicted at that particular time.

22 MR. THOMAS: Objection, your Honor.

23 THE COURT: Overruled.

24 MR. MACK: Do you think, ladies and
25 gentlemen, if they had this confidential informant

1 all they had to do -- They got two big police
2 officers. The police officer here, and Detective
3 Veverka right there, (indicating). All they had
4 to do is bring this person in to the courtroom,
5 sit him there just like they did everybody else
6 and say what they said. We don't know what they
7 said. Again, I'm saying how come we didn't know
8 what the witnesses said, only what the detective
9 said? Okay. Something is wrong with that.

10 Also, in addition, when the identifications
11 were made Detective Metzler told us on the stand,
12 I wasn't there when the photos were taken but my
13 partner was. Well, Detective Veverka is sitting
14 back there, he has been here every day, he's also
15 worked with the witnesses but in order for us
16 to get him to say how was the procedure done, what
17 was the correctness of the procedure, he would
18 have had to get on the witness stand. He's been
19 here. It's not like he has been somewhere else.
20 Yet he did not come in and we did not get that
21 opportunity to talk to him to find out what the
22 identification was on that particular night.
23 Again, why did we not have this?

24 The other thing is Detective Jones, Eugene
25 Jones, a city employee. He's able to be in here.

1 The prosecutors know where he is. Ladies and
2 gentlemen, don't you think if a detective had
3 supplied that information, had that information of
4 some confidential reliable informant, he knows
5 these people are guilty, he would have come and
6 sat on the witness stand and told you that was the
7 case? And they didn't do it. And I asked them
8 about it and they still did not produce him
9 because, again --

10 MR. THOMAS: Objection, your Honor.

11 THE COURT: Overruled.

12 MR. MACK: Ladies and gentlemen, I ask you,
13 these persons all testified they had never seen
14 any of those persons out there that night. Not
15 the shooter and not the person that was arguing
16 with them. If you don't see anybody and don't
17 know them, you come back later and you identify
18 them, I asked the detective what was Eugene Jones
19 doing out there? Mr. Watson asked him what was he
20 doing out there. We know he was not authorized to
21 be there to do what he was doing. He was like the
22 phantom man behind the scene doing something out
23 there that night. We didn't have the opportunity
24 to ask him did you have a picture of Ru-el Sailor
25 because think about this, ladies and gentlemen,

1 Ru-el Sailor's picture, according to the police
2 officers, was picked out that night but his
3 picture and skin tone matches none of these
4 descriptions right here. So tell me how, if they
5 don't match the description, if they don't match
6 the color tone, how are you able to pick out this
7 picture?

8 Ladies and gentlemen, it doesn't take a
9 rocket scientist to figure out what was going on
10 in this particular case. And they did not bring
11 that in to you. And don't forget we don't have to
12 prove anything at all. We are here, and we are
13 expecting the State to prove its case beyond a
14 reasonable doubt. And they did not do it.

15 Here is the other thing. Ellen Taylor.
16 Ellen Taylor, the lady who came in with the red
17 wig or whatever on. She told you she didn't
18 see Ru-el do any shooting on that particular
19 night. The thing that is most important of all,
20 she came in and told you about all the
21 conversations Nichole was having with her brother.
22 I asked her one thing. That night, did you ever
23 hear Ru-el Sailor's name mentioned? She said no.
24 The next day, did you hear when Nichole was
25 supposedly still talking did you hear her mention

1 Ru-el Sailor's name? No. The time that you had
2 this alleged confrontation with her did you hear
3 Ru-el Sailor's name? No. Ru-el Sailor has never
4 come up. Nichole was talking all that night
5 and she did not even mention Ru-el Sailor's name
6 if you want to believe that.

7 Now they have all the records, county
8 records, they know where the cars are registered
9 when you go and get your license and so forth and
10 everything. Has anyone in here from the Cleveland
11 Police Department or anywhere else ever come in
12 here and told you either of these guys had a red
13 car? It is absolutely unequivocally without a
14 doubt crystal clear the men who supposedly were
15 out there had a red car. Why did Eugene Jones
16 have all these confidential informants? Did
17 anybody come in and tell you that Ru-el Sailor had
18 a car? He was supposed to be the driver. No,
19 they didn't, ladies and gentlemen. We know that
20 that is not the truth and that there is nothing
21 there.

22 The State had the ability to bring in
23 anybody from the Department of Lights. I don't
24 know what they call it, Division of Lights. The
25 people that put in light bulbs and everything.

1 All they had to do if they wanted to let you know
2 without a doubt if the lighting out there was
3 light on that particular night, despite what Dude
4 said, against Dude, all they had to do is bring
5 somebody in and say we went out there and the
6 lights were working. Detective Metzler went there
7 the next day, he did not come in and tell you the
8 lights were working on that particular night.

9 Finally -- not finally, but coming close --
10 fingerprints. Now, the bullets, the casings.
11 Despite what they say, you know that you can get
12 fingerprints off the bullets.

13 MR. THOMAS: Objection, your Honor.

14 THE COURT: Overruled.

15 MR. MACK: A person loads a clip or
16 magazine, the fingerprints will be on there. All
17 they had to do, according to them -- There were so
18 many of them there, ladies and gentlemen, if they
19 wanted to do it they could have gotten the
20 fingerprints off of it. They did not have that on
21 that particular night. They did not do that,
22 ladies and gentlemen, and there is no evidence
23 that shows Ru-el Sailor did any of these things.

24 Again, I can go on and on and on about the
25 clothing. The clothing is there. Here is the

1 most important thing. The prosecutor tried to
2 make a lot to do about this jacket, (indicating).
3 I brought this jacket in too. If you remember
4 asking Dude because I anticipated that this was
5 going to be the question, I asked Dude
6 specifically did the people have on jackets on
7 that particular night? What did he say? He said,
8 No, they did not have on jackets, they had on
9 T-shirts, they had on jeans. So, ladies and
10 gentlemen, if they try to come and say this black
11 jacket fits in with this man talking all black,
12 that is not true because Dude told you they only
13 had on T-shirts and only had on jeans.

14 Somebody was a shooter out there that
15 night, ladies and gentlemen. I mean, you can look
16 at it any way that you want, ladies and gentlemen.
17 I don't know what was there, I wasn't there, but
18 Ru-el Sailor wasn't there.

19 Now what we did testify to is that when
20 they left the club, and they left this club at
21 12:40 that night, that he was with Cordell at
22 12:40, and on that particular night I say to
23 you, ladies and gentlemen, it's very obvious to me
24 and I'm not -- I can't speak for you because you
25 are the sole judges, if they left at 12:40 that

1 night, from all the tapes and all the testimony
2 they have said the shooting took place at 12:15.
3 There is no way my client could have been there.

4 Who was the first person at The Benjamin
5 Bar that night? Think about this. Ru-el Sailor.
6 Who came next? Samuel Brown. Who came last,
7 Cordell, ladies and gentlemen. That is why I'm
8 saying to you my client was not out there at that
9 particular scene that particular night. I think
10 the evidence is abundantly clear that he was not
11 out there.

12 I say, ladies and gentlemen, I can talk
13 about complicity, I can talk about all those other
14 things, felonious assault, I can talk about
15 kidnapping, but my main thing to you, ladies and
16 gentlemen, I'm not talking all those particular
17 things because my client was not there.

18 I only represent one person, and that is
19 Ru-el Sailor. And I say to you, look at all the
20 evidence, telephone calls and all that stuff they
21 put on about Ru-el Sailor. Ru-el Sailor did not
22 do this, ladies and gentlemen. And I'm going to
23 tell you right now, I'm going to make the
24 compassionate plea that, again, this is a very
25 serious case and they have to prove this case to

1 you beyond a reasonable doubt and, ladies and
2 gentlemen, I say you can't have six shooters.
3 There is only one. So you cannot have that many
4 descriptions. I don't know whether it was
5 inferred, ladies and gentlemen, they would all
6 come up with the same shooter. You will not have
7 the same type of clothing. It was the motive on
8 them to get those people together to try to
9 convict one person along with another person, and
10 he was not there.

11 I thank you very much.

12 MR. THOMAS: Can we approach?

13 - - - - -

14 (Thereupon, a discussion was had
15 between Court and counsel outside
16 the hearing of the jury and off the
17 record.)

18 - - - - -

19 (Thereupon, the following proceedings
20 were had in open court:)

21 THE COURT: We're going to take a break.
22 Remember the admonition. Don't discuss the case
23 with anyone or let anyone discuss it with you.
24 Please don't form an opinion about this case until
25 it is in your hands for deliberations.

1 All rise.

2 - - - - -

3 (Thereupon, a recess was taken.)

4 - - - - -

5 THE COURT: We have gone over the charge.

6 The State has no deletions, additions, et cetera?

7 MR. THOMAS: No.

8 THE COURT: Mr. Watson?

9 MR. WATSON: No, your Honor.

10 THE COURT: Mr. Mack, any additions,
11 deletions?

12 MR. MACK: No, your Honor.

13 THE COURT: Mr. Willis?

14 MR. WILLIS: I'm still concerned about that
15 felonious assault.

16 THE COURT: Okay. That is what count just
17 for the record?

18 MR. WILLIS: I don't have it in my mind.

19 THE COURT: The count that pertains to
20 Clark Williams -- I'm sorry, Omar Clark so it
21 is 9 and 11. And you object to those?

22 MR. WILLIS: And the complicity related to
23 them.

24 THE COURT: All right. Thanks.

25 - - - - -

1 (Thereupon, the jury was brought
2 into open court and proceedings
3 were as follows:)

4 - - - - -

5 THE COURT: Mr. Willis, on behalf of the
6 Defendant Nichole Hubbard.

7 MR. WILLIS: Thank you, Judge.

8 - - - - -

9 CLOSING ARGUMENT ON BEHALF OF DEFENDANT NICHOLE HUBBARD

10 MR. WILLIS: Judge McDonnell, counsel,
11 ladies and gentlemen of the jury, this is a
12 serious case. Make no bones about it. But there
13 are certain things that are simply obvious to me.
14 I think they ought to be dealt with somewhat
15 summarily, and I will do it in this manner. You
16 can look at all of these pictures, autopsy photos,
17 the other photographs, the clothing autopsy
18 reports and what have you, and those items are not
19 going to help you, as I see it, in deciding whether
20 or not the State has lived up to its heavy
21 responsibility of proving guilt beyond a
22 reasonable doubt. And, certainly, with reference
23 to the autopsy photos, I can commiserate with the
24 family certainly. They lost a human being. But
25 as once said by a poet, Every man's death

1 diminishes me because I am identified with
2 mankind.

3 So the death of Omar Clark diminishes me,
4 diminished you, it diminishes all of us who
5 identify with mankind. But I'm a firm believer
6 that life is for the living, and although no man
7 is an island unto himself, we certainly have to
8 deal with reality. And what is the reality here?
9 The reality here is that someone shot and killed
10 Omar Clark. Your job in this case is to decide
11 whether or not the State has proven its case
12 against these Defendants. I represent Nichole
13 Hubbard. Whether they have proven their case
14 against her.

15 In order to come to a decision on that
16 matter we're going to have to come to some kind
17 of understanding and label that we can place on
18 the people the State has asked you to believe.
19 We know who Dude is. He tells us -- That is Clark
20 Lamar. He tells us that he was with Omar Clark
21 that day, and early on they started drinking. We
22 know from the autopsy report that Omar had in his
23 system cocaine, alcohol. We know this because
24 that is what the autopsy report tells us. We know
25 from Dude he smoked a blunt, participated in

1 smoking a blunt. We know from Dude that he
2 participated in the use of this Wet as they call
3 it. He had all of these substances in his body.
4 Now I'm not saying that to condemn Omar but to
5 show you who Dude is because Dude was there with
6 him and they were participating in each of these
7 narcotic drug uses, bottle for bottle, blunt usage
8 for blunt usage. We have to believe that he also
9 used cocaine because cocaine was found in the dead
10 man's body.

11 Now, he was classified by one of his
12 neighbors as being a thug. Do you recall the
13 young lady testified she came by in her truck and
14 she saw these thugs standing in the street.
15 Standing in the street. She made a call. I
16 mispronounced her name before, and I'm going to
17 try to get it right, Tenella, or something like
18 that, whatever her name is. But she tells us
19 things that are very, very important. She says
20 that from the point when she passed these thugs in
21 the street to the time when she pulled into her
22 driveway and used the phone that was a lapse time
23 of two minutes. We know what time she used the
24 phone. At least we know what time her call was
25 answered because the 9-1-1 operator tells us and

1 we heard it on the tape.

2 Now, Mr. Watson makes a very, very serious
3 point when he says all these calls they're talking
4 about, three ways, and my brother is arguing with
5 somebody, all these calls took place at 12:05.
6 12:05. The 9-1-1 tape was around 12:26 or 12:23,
7 but at least at that point in time.

8 We know from Jermaine Kidd that he was
9 walking down the street or jogging, if my
10 recollection is correct, when he came upon Omar
11 and Dude. Car pulled up, he went on, and before
12 he could get around the corner at this field where
13 he was going through he started hearing shots.
14 That's pretty consistent with the two-minute
15 interval that the young lady driving the truck
16 gave us. So that is the one thing that seems to
17 be fixed, the time of the 9-1-1 call. So you have
18 to relate that back.

19 Now, let's talk a little more about Dude.
20 He got on the witness stand and told us that he
21 was shot in the buttocks. Didn't tell the police
22 about it, no medical testimony, didn't bring the
23 pants in to show us a hole. I don't know whether
24 he jumped over a fence or not, but he tells us he
25 went south to Garfield, made his way around, and

1 came back home and went into the basement. He
2 tells us that he talked to Lamar the next morning,
3 and then there was some question whether he talked
4 to him before the police talked to Dude or whether
5 it was afterwards. Not really important. But
6 what do we know? We know that when the State put
7 him on the witness stand they asked him to
8 identify somebody as the shooter. He made an
9 identification.

10 Now, what is it that we know? We know he
11 didn't see any gun being fired. We know that
12 because he admitted it. We know that he didn't
13 see anybody get shot. So what has happened here?
14 He was manipulated because of the questions, Can
15 you identify the shooter? And, obviously, he
16 knows the State wants him to identify somebody.
17 And he did.

18 About this manipulation. A man by the name
19 of Joseph Mayhand testified in this case. You
20 recall there was some discussion about his
21 testimony and whether or not when he made a
22 reference to one of these two people that he
23 claims that he saw being lighter than the other he
24 got manipulated into saying his reference to light
25 was to weight. Do you recall that? I'm going to

1 read this testimony. And the only reason that I
2 am reading is because I want to put it beyond
3 challenge. Here is what he said. I said he had
4 on red. Red also. I said -- believe I said he
5 was a little taller than the other guy. I said
6 that he was lighter. I said that he was lighter
7 than the guy that was arguing with him. Question:
8 So the guy that was the shooter you said was
9 lighter than the other guy that was arguing; is
10 that correct? Answer: Yeah, that's what I said.
11 You described both persons as being light skinned;
12 is that correct? Answer: Yes, I did. That
13 doesn't sound to me like he is talking about light
14 in weight. The lawyer, to his credit, asked him
15 this question. Also, in that particular statement
16 you indicated the shooter was light skinned
17 wearing red, got in on which side of vehicle as he
18 pulled off? I forgot, to be honest with you. I
19 forgot. He's still talking about the shooter
20 being light skinned.

21 Now, it bothers me. It might not bother a
22 lot of people but it bothers me when the police
23 take an answer, which is blatantly obvious, and
24 suggest to the witness in the question they want
25 to alter his answer. Here is another question.

1 One thing we do know, both individuals out there
2 that night were light skinned. The shooter was
3 lighter than the other light-skinned gentleman.
4 Is that safe to say? That is what you put in your
5 statement? Answer: Yes, that's what I put in my
6 statement. Yeah, the prosecutor succeeded in
7 getting him to say that his reference to light was
8 a reference to weight. To me, that's wrong. It's
9 just that simple. There ain't no two ways to put
10 that. It's wrong.

11 Now one might say, Willis, you are
12 representing Nichole. Why are you making that
13 argument? Well, Nichole's fate is tied to a
14 determination by you, ladies and gentlemen of the
15 jury, that her brother was one of the culprits and
16 that she, according to their indictment, was
17 responsible for him doing anything that he did
18 that night. But even then I have a problem
19 because he is charged with aggravated murder.
20 She's not charged with that. And the aggravated
21 murder, as you will come to know, he's charged
22 with acting with prior calculation, and design.
23 The inference you're supposed to get from that is
24 that the State was going to make the effort to
25 prove that when he went to this location his

1 intent was to kill. Well, if she's responsible
2 for him being there, and she aided and abetted in
3 his presence, she should have been painted with
4 the same brush, don't you think? But, no.
5 They're going to be clever. They're going to say
6 whoever was responsible directly for the death she
7 did not aid and abet in that occurrence, and she
8 was not in complicity with them. But to the
9 extent they committed a crime less than aggravated
10 murder, then she was in a complicitus relationship
11 with them. Now that is pretty technical stuff. I
12 follow it. I hope that you do too.

13 Now, let's talk about some of the other
14 witnesses. We mentioned Mr. Kidd, and Mr. Kidd
15 gives us the benefit of his relationship with Gene
16 Jones who, incidentally, is indeed a friend of
17 mine. I know him. That is why I talk about him.
18 And I don't want to talk about him behind his
19 back. I tell him I'm going to talk about him and
20 I talk to him to his face. He is out there
21 investigating this case, and he comes in contact
22 with this Kidd fellow who tells you he's a drug
23 dealer. He makes no bones about it. He says that
24 Jones indicated he was interested in this case to
25 some extent, I take it, and that he was going to

1 make it difficult for Mr. Kidd to practice his
2 profession as a street pharmacist.

3 MR. THOMAS: Objection.

4 THE COURT: Overruled.

5 MR. WILLIS: He told you that he sold drugs
6 and he said that he may have had some drugs on him
7 that night. I call that street pharmacy. Now,
8 we're talking about manipulations. Now, if the
9 police want to put me in a lineup tomorrow, they
10 could do it. All they have to do is subpoena me,
11 have the grand jury subpoena me, and have the
12 grand jury have me stand in a lineup, give blood,
13 give urine, give hair. Not impossible. So to
14 suggest as he does that somebody has to be in jail
15 and locked up to have them stand in a lineup
16 suggests he's living in a fantasy world.

17 Now, any identification can be -- I asked
18 him the question if you show a man a picture
19 the odds are five to one of any one person being
20 hit. When a person comes down to look at a
21 picture, look at some pictures they know, and the
22 policeman hands you a picture from six photos, the
23 person knows that the police suspect somebody in
24 that group to the tendency of the prior
25 calculation and design. I'll pick something that

1 comes closest to my recollection. And how do we
2 know? How we do know? We know there are
3 miscarriages of justice. It is proven that there
4 are a lot of mistaken identification cases of
5 people. So to suggest that the procedure that
6 Cleveland uses is infallible is ridiculous. It is
7 like an old saying that I once read in history,
8 when it was said in English, It's a sad commentary
9 if the only argument that can be made in favor of
10 doing something in a particular way is to say
11 we've always done it that way since Henry the
12 Eighth. That is the same type of analogy that I
13 can say here. It is a sad commentary the only
14 thing that you can say about Cleveland's
15 identification procedure is to say we've always
16 done it that way. They could buy a 25 or \$30 tape
17 recorder because the officer admitted the most
18 important thing that comes out of a witness's
19 mouth that are called upon to make an
20 identification is the first thing they say. We
21 should not have to depend on what the officers say
22 the person says. We can time it. He said it was
23 spontaneous. If you put a timer in there, we
24 don't have to guess. But that is the way they do
25 it, and I suspect we will be stuck with that

1 procedure for a long time.

2 Now, it's critical I think two witnesses in
3 this case testified they believed the person that
4 had this gun and who shot Omar was told by the
5 other person, Don't shoot Omar. He's family.
6 Something like that. Maybe Omar said something
7 about he was family. Supposedly it was said -- I
8 wasn't there -- My cousin is his baby's mother or
9 he's my cousin's baby's father. Whatever it is.
10 Where the girl had the baby and Omar was the
11 daddy. And that baby's mother concept has come
12 upon me, and I have a lot of trouble somebody is
13 my baby's daddy or baby's mother. But the point
14 being that he knew and told the shooter according
15 to witnesses, Don't shoot him. What does that
16 sound like to me? Assuming they went there to do
17 some mischief and all of a sudden Omar is
18 asserting himself, and the guy says, Wait a
19 minute. Don't do anything to Omar. He's my
20 cousin's baby's daddy. That sounds like an effort
21 to disassociate himself from any violence. That
22 is what it sounds like to me. Violence. Two
23 witnesses have testified to that. Violence. An
24 aspect of it.

25 We also had a witness who said he heard

1 some women or a woman involved in this
2 confrontation immediately before the shots were
3 fired but he is the only person that tells us that
4 he heard a woman's voice. We have another voice
5 to tell us that before the red car pulled off and
6 went west on Englewood, 205, a car in which three
7 women were in pulled off first and made a left
8 turn on 105 which would send it towards Superior
9 Avenue. I was not there. I don't know anything
10 about what happened. I don't even know what the
11 evidence is.

12 A person asked me a little while ago, and
13 he may very well be right, he said this supposedly
14 happened on Englewood. I said that is what they
15 say. He said that street might be famous. I said
16 I hope it doesn't become famous for drugs or
17 people getting killed. He said I truly believe
18 that is the street the man who founded Superman
19 lived on. We know he's in Cleveland, we know he
20 went to Glenville, so he lived on one of those
21 streets. He thought that that was the street. I
22 said, I never heard that. I do know that he went
23 to Glenville High School and I do know he lived in
24 that area so he could have lived on Englewood.

25 But let's think now seriously about these

1 charges. They charged Nichole with acting in
2 complicity with whoever it was they said was her
3 brother. The Court is going to instruct you that
4 you have to determine she aided and abetted.
5 Aided and abetted. The Judge will define aid and
6 abet. She aided and abetted and caused the death
7 of Omar Clark. Now, tell me, what did she do?
8 The evidence is she made some calls, or there was
9 some phone calls between her and her brother
10 around 9:05 and some phone calls after the 9-1-1
11 call was made. Nobody can tell us what was said
12 during those calls. So if we suppose that what
13 Puddin says she was told, that is that she's
14 arguing -- he's arguing with the boys, that
15 argument stops at 9:05 or thereabouts. So you
16 have to get from 9:05 -- I'm sorry -- 12:05.
17 12:05. You have to get from 12:05 all the way to
18 12:23, 24, 25, 26. If you have got to accommodate
19 in your ability to get there the fact that Kidd
20 says it happened within the span of time and the
21 young lady -- she says after she passed them,
22 which was before the shooting until the shooting
23 took place, you can hear her on the tape, is
24 now -- she says that is a two-minute interval.

25 What did Nichole do? She made a statement

1 to the police. And the fact that people can't
2 remember where they were and times they made calls
3 and whether or not they talked to somebody else,
4 that is not proof of guilt. Admittedly she made a
5 statement. I can say, frankly, if I would have
6 represented her she would, but her attorney
7 advised her and she did. She got all the times
8 screwed up. She did not talk to her brother, and
9 there was never a connection. What does that have
10 to do with this case? The State wants to offer
11 literally the fact of these connections into proof
12 beyond a reasonable doubt because that is what
13 you have to do in order to convict her of
14 anything. You have to believe that these phone
15 calls proved to you -- and what Puddin says about
16 them -- proved to you beyond a reasonable doubt
17 she is in some way responsible for this murder.

18 Now they have charged kidnapping. Where is
19 the kidnapping? The Judge will instruct you that
20 did you restrain somebody of their liberty? I
21 guess you can say whoever did this restrained him.
22 He killed him. Did he remove him from someplace?
23 Nobody said anybody was removed anywhere. If I
24 understand the kidnapping charge involving Dude,
25 there was a kidnapping involving Dude in which his

1 testimony was when he saw a gun it was time for
2 him to go. And he did. When and where was he
3 kidnapped? They want to say that he was
4 feloniously assaulted because he was supposedly
5 shot in his behind. Did not tell the policeman
6 who talked to him that night, he did not go the
7 hospital, or bring his clothes in to see there was
8 a bullet hole, or take it to the Trace Evidence
9 people and see if they see any of the oily
10 substances that are on bullets on his clothes
11 which would suggest that a bullet passed across
12 his clothes in order to get to his behind. They
13 did not do any that. They did not look around to
14 see if there was bullets holes in a house. Nobody
15 reported their house was hit. Where is the
16 felonious assault on Dude?

17 Where is the felonious assault on Omar
18 Clark? The evidence, as I heard it, was that Omar
19 supposedly put his hands on somebody and the
20 person said, Take your hands off me. Maybe when
21 this person who did the shooting is ultimately
22 found he may very well say he shot Omar Clark in
23 self defense. If the person they charged was not
24 there, how does he know? But the facts do not
25 show Omar Clark was assaulted, and they certainly

1 don't show Nichole aided and abetted him in
2 assaulting Omar Clark. That is what you call a
3 quantum leap to go from that evidence all the way
4 to the conclusion that Nichole aided and abetted
5 in some action which is itself questionable as
6 having been proved beyond a reasonable doubt.

7 With reference to both of these kidnapping
8 charges, I have a lot of trouble in trying to
9 understand the charge itself. With reference to
10 the murder charge we have to decide, and that is
11 most serious charge against the young lady, that
12 she had an intent. First of all, you have to
13 prove she sent her brother there. And when she
14 did so her intent was that he should commit a
15 crime. Not against Omar, but against Lamar Clark.
16 Because if she has a beef and has an argument it's
17 not with Omar, it's with Lamar Clark. So you have
18 to say that there is some sort of conspiracy
19 between she and her brother, and she sent her
20 brother there to do some kind of harm to Omar
21 Clark. The kind of harm in beating him up and
22 killing him for \$10.

23 There is testimony they are reasonably well
24 off, they have been in business with a store
25 contracting business for years. For \$10? Come

1 on. Now, where is the proof she directed any
2 action that took place there by anybody?

3 Now, there is also something in the
4 evidence that Puddin says. Puddin says Nichole
5 told her she told her brother everything was cool
6 and forget about it, or something to that effect.
7 The State will ignore that, and Puddin certainly
8 is not a friend today of Nichole. There is one
9 thing about it. She's a dope fiend. She uses
10 Wet, she buys it on a regular basis. She has a
11 way to get it. She tells us she does hair. She
12 didn't say she had a license or worked in a beauty
13 shop, and she gets enough money to spend 30, 40,
14 50, \$60 a day for her habit. All of a sudden
15 she's cured, and she doesn't use it anymore.
16 She's clean. I'm sure the State told her, Clean
17 yourself up when you come to court. Don't be
18 under the influence of that Wet. Now, if it was
19 that easy for people to stop using it, we would
20 not have all the headaches we have here in the
21 world today.

22 Now, they talked to a number of people and
23 I think it's apparent that these people they
24 brought in here are the best they could find. The
25 best they could find. And, yet, not one witness

1 other than Puddin tells you that the Defendant
2 Nichole Hubbard said or did anything that
3 stimulated or caused any of the action that took
4 place out there on Englewood. Granted, the
5 testimony was that she used some of these drugs.
6 That is one of her faults. But that doesn't say
7 to you or to me or anybody she was in a
8 complicitus relationship with anybody.

9 Now, the evidence in this case is pretty
10 clear to me. Pretty clear. We are not here
11 asking for any mercy, believe me. Indeed, yours
12 is not the prerogative for mercy. You are,
13 rather, the administrators of the law that is
14 itself merciful, a law that deems it to be a
15 fastidious thing even if the guilty should escape
16 that and the innocent should suffer. As
17 Shakespeare's Hamlet said, The slings and arrows of
18 an outrageous fortune. For, indeed, if she is
19 convicted on any of these charges in my judgment,
20 at least, hopefully in yours, it would be a
21 miscarriage of justice. The evidence that the
22 State was required to produce does not meet the
23 test, the acid test. It does not carry with it a
24 persuasive force that is capable of convincing
25 people she is guilty as charged and guilty on the

1 basis of the evidence which proves itself beyond a
2 reasonable doubt.

3 Now I can probably talk longer, but I
4 won't. I'm aware at the risk of sounding
5 facetitious I'm convinced the mind can absorb only
6 what the seat can endure. But it is important
7 that you understand with reference to
8 identification testimony that certainty -- or
9 certitude function is not the test for certainty
10 or accuracy. If it were, the DNA would want be
11 working overtime in the manner that it is today in
12 this country. And the people who have been freed
13 would be dead by now based on identification
14 testimony manufactured at the hands of the police.
15 Particularly in Chicago. We're in Cleveland.

16 I'm thankful that you will make the
17 appropriate decision in this case and that you
18 will live up to your oath to well and truly try
19 and in true deliverance make between the State of
20 Ohio and Nichole.

21 Judge McDonnell, I certainly want to thank
22 you for the most judicious way in which you have
23 presided over this case. I'm really proud of the
24 way this case has been conducted; efficiently,
25 judicially, fairly. I ask only that you people be

1 fair to this Defendant. And if, after you have
2 considered all of the evidence, you are satisfied
3 that the State has failed to prove the charges
4 against Nichole Hubbard, you should say so by your
5 verdict.

6 If, on the other hand, you are convinced
7 beyond a reasonable doubt that the State has
8 produced evidence that convinces you beyond a
9 reasonable doubt then, of course, you should find
10 her guilty. But I don't think that is even
11 remotely possible. I ask for verdicts of not
12 guilty on all charges.

13 Thank you.

14 THE COURT: Mr. Thomas, on behalf of the
15 State of Ohio.

16 MR. THOMAS: Thank you, your Honor.

17 - - - - -

18 FINAL ARGUMENT ON BEHALF OF THE STATE OF OHIO

19 MR. THOMAS: Let's look at the obvious.
20 Recall these numbers. This case is not about
21 money. Ultimately it began about money, but
22 ultimately it's not about money. What it is about
23 is honor and maltreatment of a sister. How many
24 points of description do we have that are
25 consistent on that issue? This case is not solely

1 about eyewitness identification. Yes, it has
2 eyewitness identification in it, but what other
3 opinions do you have to check with your own
4 conscious, with your own common sense, with your
5 life experience, things that support the
6 identification? Had the State marched in here
7 witnesses who would say everything that was
8 identical to the highest degree Defense counsel
9 would argue it was descriptive and rehearsed. You
10 heard variance inscriptions. There is no getting
11 around that. We called those witnesses because we
12 wanted you to have the benefit of the portion of
13 the event they saw and how they perceived it as
14 individuals. We felt they had something of value
15 to present in this murder trial. And murder trial
16 it is. A life was taken here.

17 We may not like everything we know now
18 about this slice of events that happened on
19 Englewood on November 16th and 17th, we may not
20 approve of everything that Dude and Omar were
21 engaged in that day or that night, but Omar had a
22 right to live. Ask yourselves as representatives
23 of the community what do you say to yourself when
24 you hear testimony in a case such as this that
25 when people describe their fear and apprehension

1 about becoming witnesses? Remember Brandon Gibbs?
2 I didn't come forward because I didn't want
3 somebody coming around to my door and shooting me
4 or my family. And he made a reference and pointed
5 over there to those guys, (indicating).

6 When death came calling for Omar that
7 night, death wasn't in a hurry. Death was calm,
8 death was deliberate, and death took its time.

9 Recall Larry Braxton when he said after the
10 shooter pumped the first volley of shots in Omar
11 and he fell to the ground he stood over him calmly
12 and continued to fire. Do we have anybody
13 describing the shooter then running away in a
14 hurry and in apprehension about being caught? No.
15 He calmly and coolly walked away knowing that he
16 was leaving witnesses on the street. He, the
17 shooter, did not care. He didn't care about
18 witnesses, didn't care about the fact that he was
19 committing this in the middle of a residential
20 area, didn't care the bullets may fly into a
21 house, into a bedroom of an adult or child. None
22 of that was a concern. The only concern was the
23 argument that began over the \$10 and a sister's
24 honor. Ask yourselves, how many points of
25 consistency do we have about the words of the

1 argument, If my sister says it's you, you're outta
2 here or words to that effect. There are
3 variations on those words.

4 Here is a point of comparison. We have
5 those words recurring, and each witness described
6 it with a slight variation. Does anyone here
7 believe those words in some fashion, some
8 variation of that phrasing were not said? If so,
9 fine. . That is your province. But it is an
10 analogy to human experience that everybody sees
11 things a little bit differently and hears things a
12 little differently.

13 On voir dire you recall me saying if
14 someone observed a roadside accident do you think
15 somebody on the other side of the accident would
16 recall what you saw a little differently? The
17 answer was, yes, of course. Nichole brazenly
18 talks with an attorney to mislead the police
19 because there is no other context you can put on
20 that statement and these cell phone records but
21 that she is withholding information in an attempt
22 to divert the police away from herself and her
23 brother because as we know, ultimately, the cell
24 phone records bear it out in spades. She talked
25 to her brother's number seven times. She only

1 tells the police she made one call and didn't even
2 make contact and didn't leave a voice mail. Why?
3 Why say that to the police if you are innocent, if
4 nothing happened that night that you need to be
5 worried about?

6 What Nichole did that night was get angry,
7 and she was high, and she got mad about getting
8 played by Dude. She called in an air strike. You
9 recall the testimony the time between the call and
10 Dude and Omar walking down the street was five
11 minutes or thereabouts. We cross over a moment
12 into the Defense case and the alibi. The
13 testimony that was presented to you where you were
14 asked to believe some pretty improbable things.
15 Improbable that these phone calls took place
16 between Nichole and Cordell. But according to the
17 witnesses Cordell is engaged in a rap contest,
18 free-form rap contest, where if he is thinking at
19 all what he is doing he is thinking about
20 responding to Bobby Nettles as Bobby is shooting
21 verses back at him, and he will get a chance to
22 shoot verses back.

23 When you see State's 141 ask yourselves how
24 from just before midnight to just after going up
25 to 12:30, right at the time or just past the time

1 of the shooting, how is Cordell engaged in the rap
2 contest yet taking all these calls from Nichole?
3 These are successful calls.

4 Recall the testimony that the line was
5 open. Now, of course, we don't know the content
6 of conversation in those calls except for the
7 portions that were heard by witnesses and what was
8 testified to. What did Nichole do Mr. Willis
9 asked? A, she instigated Cordell's involvement
10 and assisted in identifying the person that he was
11 going to extract for her revenge. How? Does he
12 have a blue Nautica coat on? Do you recall the
13 testimony of Dude which is unrefuted? Think what
14 you know about Dude, about his drug consumption
15 and alcohol consumption, but it was unrefuted he
16 had that Nautica coat on both when talking to
17 Nichole and confronted by Cordell that he had the
18 coat on, and as Omar and Dude are then arguing in
19 turn with Cordell in his anger they get the
20 response to shut the F up. If my sister says it's
21 you, you're outta here. There is no gunfire right
22 at the initial approach. He's being deliberate in
23 his efforts to identify whom he is speaking to.
24 And the testimony is the gunman approaches with
25 the gun down, and raises the gun as Omar is trying

1 to play peacemaker. In apparent anger at Omar
2 laying hands on Cordell, Ru-el then starts firing.
3 Ru-el is there as the muscle for Cordell. But
4 there may be even more to it than that.

5 Recall from Desatnik's testimony and Joint
6 Exhibit 1 Dude's description of the event that
7 night. On Sunday, 11-17-02 at about 00:45 he is
8 in company with patrol Officer Shani Hannah. I
9 had occasion to interview Clark Lamar concerning
10 the homicide of Omar Clark. Lamar stated he and
11 Omar were walking westbound on Englewood when
12 approached by two black males both described as 25
13 to 30 years old, five eight, 205 pounds, short
14 hair, slight mustaches, medium complexion. One
15 wearing light-colored clothing with a black
16 semiautomatic pistol, the other with his hand in
17 his waist band giving Lamar the impression that he
18 was also armed though he did not actually see a
19 weapon. Lamar also stated the two suspects looked
20 alike, were possibly brothers. Lamar states the
21 armed suspect and Omar Clark were arguing over a
22 female which is when suspect began firing numerous
23 shots striking Clark several times. Lamar then
24 stated that he fled into a backyard back to his
25 residence believing that he was also being shot

1 at. We have people standing on porches, in
2 fields, in the street under trees, and parked
3 cars. They are getting out to look up, over, and
4 there are variations in the lighting, and in the
5 distances, and in the individual abilities of
6 their eyes to perceive. Yes, it is your job to
7 test all those variables and say, What do we have
8 here?

9 Well, in addition to those descriptions you
10 have photo identification. The Defense wants to
11 argue that Umar Clark and Detective Jones of the
12 Cleveland Police had a role to play in this case.
13 The Defense has the power of subpoena the same as
14 the State. Nothing precluded them from calling
15 either of those two individuals if they felt
16 they had something to add to this case of merit.
17 They did not call them.

18 We have the photo pick in State's 131 of
19 Cordell. Now, to my eyes -- this could be just
20 me -- he appears heavier in the photo than in
21 court slightly. His face has a certain fullness
22 that it doesn't have here today but that is an
23 individual judgment.

24 In State's 5 we have the testimony of Ru-el
25 himself that yes that, in fact, is him. We have

1 Larry Braxton and Joseph Mayhand bringing up the
2 color red. There is also Brandon Gibbs talking
3 about black. And then what do we have in these
4 Defense exhibits? Larry Braxton talks about a red
5 headband or red visor. What do we have? Red
6 headbands, a red jogging suit, or red jacket.
7 Cordell; on his upper body the primary color is
8 red. Just like Mr. Willis didn't touch on
9 Nichole's lies to the police, you didn't hear Mr.
10 Mack touch on Ru-el's admission to totin' guns.
11 Is there a reason?

12 Now, in addition, we have Tenitta. Tenitta
13 has a job, she was well spoken, fairly articulate,
14 and in the manner of her personality certain about
15 what she saw. She, too, expressed apprehension.
16 She did not want to give you the color of her
17 truck for fear of announcing it in open court. Do
18 you recall that? Do you recall the detective's
19 testimony was that, yes, people were asked for
20 written statements but they took time. Now
21 Tenitta said, As I rode down that street and
22 looked out my window, the face I did not recognize
23 is this face. Number 4. She puts Cordell there
24 at that moment of the fight. This is just after
25 Brandon Gibbs and Larry Braxton and Damien have

1 pulled up but not completed parking and allow the
2 truck to pull past.

3 What association have you heard in any of
4 this evidence that gave Cordell a reason to be on
5 that street at 12 midnight or 12:15 or 12:26 other
6 than Nichole's problem with Dude? Ask yourself
7 that. What reason does he have to be there at
8 that time? Larry Braxton, the next closest
9 observer after Dude and Tenitta, says as he leaves
10 Brandon Gibbs' car, crosses across the street to
11 go to his porch, he is in the middle of the
12 street. He looks, he sees the gunman. The gunman
13 is No. 5 in State's 132, Ru-el Sailor.

14 What felony convictions did Larry Braxton
15 have? What felony convictions did Tenitta Johnson
16 have? What felony convictions did Joseph Mayhand
17 have? Joseph also describes standing on the porch
18 and seeing the shooter in red.

19 You head the testimony of Leshawn McCreary,
20 Cordell's girlfriend, the woman with the job and
21 the children and the Ford Contour you heard her
22 describe, as I recall, purple. Another witness
23 described it as blue. But yet they each know the
24 color of the car. Adjectives, word choice, are
25 subject to personal preference, personal

1 variation, any number of factors. But for
2 Nichole's actions in calling her brother, which is
3 demonstrated amply and completely in State's 141
4 and State's 3, Cordell would have never been
5 there. Absent Cordell's argument with Dude over
6 his sister's honor and how she had been talked to
7 or treated, You can't talk to my sister that way.
8 Absent that, Ru-el wouldn't have been there. This
9 gun-toting young man over here, (indicating).

10 They say a picture tells a thousand
11 stories. Think back in the moment in time when I
12 was holding this jacket, (indicating), this
13 Defense Exhibit. I said, Ru-el, which pocket is
14 the gun pocket? There was a long pause, and what
15 I interpreted as a bit of surprise on his face.

16 MR. MACK: Objection, your Honor.

17 THE COURT: Overruled.

18 MR. THOMAS: But you are free to interpret
19 what you saw. He didn't have an answer because he
20 had to stop to think. And for those of you with
21 children, when you are confronting a child about
22 an issue and you say you don't have to stop and
23 think, just tell me what happened, the truth is
24 easy to tell. You don't have to stop and pause to
25 think about it. You just tell from memory what

1 you know. What was the reason for that huge, huge
2 pause at that moment with Ru-el? Why wasn't the
3 jacket even here at the beginning of the Defense
4 case? Why didn't Mr. Mack bring out Ru-el's own
5 calls to Cordell? There are five calls here
6 before or after the critical time beginning at
7 around 11:30 on Page 7, which is the first page of
8 exhibit journal entry 237, 238 and 239, success,
9 107 seconds; success, 39 seconds; success, 51
10 seconds. Also highlighted are Nichole's calls
11 with Cordell. Journal entries 223, 225, 227, 229
12 and 230. Then at 1:10, Ru-el's calls again.
13 Journal entries 211 and 212. Success for 55 and
14 57 seconds each, 1:09 and 1:10 a.m. More calls
15 throughout the rest of the day.

16 Samuel Brown, their buddy, says that he's
17 never known either one to hold a job. All of a
18 sudden after that we started hearing about, oh,
19 well, Cordell works at his parents' market and so
20 on. But that is not what Samuel Brown testified
21 to.

22 St. Aloysius and the cabaret, 110th and
23 St. Clair or thereabouts, if I recall correctly.
24 Recall Ru-el's testimony. I asked him how far is
25 105th and Englewood from St. Aloysius? It's not

1 that far. It doesn't take that long if you know
2 the back roads how to get there. Instead of
3 taking the main avenues you take the back roads.

4 Recall the time that Ru-el slipped in his
5 testimony. Do you recall that? When he was being
6 asked on cross-examination by Mr. Watson of the
7 1:09 and the 1:10 a.m. calls, what were those
8 about? Well, he's all over the board. His
9 answer? I recall it, but recall it for
10 yourselves. I'm merely restating it according to
11 my memory, but you rely on your memories. Well,
12 it was either he was calling to tell me that he
13 was leaving Benjamin's or calling to tell me that
14 he arrived at 4U2B. Wait a second. How does that
15 then jibe with we're traveling in a white focus
16 traveling together? We arrive at Benjamin's
17 together, we left together, we arrive at 4U2B
18 together and left 4U2B together and went to St.
19 Aloysius. What is going on with that? A slip of
20 the tongue? No. A slip of the truth.

21 What we would suggest the evidence shows is
22 that you have got these Defense witnesses saying
23 certain things happened that night, but time lines
24 aren't exact. We know from the cell phone records
25 certain time references that, according to the

1 phone company, are computer generated and exact.
2 You have to ask yourself, is it possible that the
3 following happened: They went to Benjamin's, but
4 not as late. It was actually earlier. They
5 stayed about the time they say it was, they stayed
6 there. Then they went to 4U2B but not as late.
7 And that on the way back from 4U2B they stopped on
8 Englewood. That is when the shooting occurred.
9 Then they skipped over to St. Aloysius and took
10 his photos with the explicit intent of we'll have
11 photographs to prove where we were not thinking
12 there were time issues from cell phone records.

13 Ellen Taylor interviewed with the police
14 and told them about Nichole's conversations from
15 the moment around 12:15, 12:30 or 12:05, where my
16 brother is on the phone he is arguing with them
17 now. Was that accurate to your satisfaction to
18 make you believe that that testimony was not
19 credible on that point? It is backed up by the
20 cell phone records as testified to by the cell
21 phone representatives from Sprint and Verizon.

22 In Nichole's statement she denies talking
23 to Cordell. She minimizes Puddin or Ellen Taylor,
24 and she exaggerates Maria's involvement. Why do
25 that? Why attack Ellen at a bar some months later

1 because "you're testifying against me"? Why knock
2 her to the pavement and start a female fist fight
3 if you did nothing? If you are Nichole and did
4 nothing, what do you have to fear from Ellen?
5 Tenitta on the issue of thugs. Do you
6 recall I asked her, Do you exclude anyone from
7 that description? She said no. I said, Did you
8 include Cordell when you used that term? The
9 answer was yes. Yeah, she was using this
10 pejorative to say these are all a bunch of young
11 men in some sort of fight or altercation they
12 shouldn't be involved in. And who knows what it
13 is about or why it is happening. She jumps on the
14 phone, and you heard in the exhibit the tape
15 recording which has been twisted to suit the
16 satisfaction of the Defense where she begins the
17 call saying, I think somebody has been shot. But
18 then in the background, and the detective
19 testified to this, you can hear the pops. Play it
20 for yourself. As she's speaking and pauses, I
21 recall hearing at least distinctly, and I believe
22 more, pop, pop, pop, pop. All of a sudden the
23 tone of her voice changes from one of description
24 to one of fear and panic. Oh my God, somebody is
25 being shot. Not, I think somebody is shooting.

1 She realizes as she is laying on the ground behind
2 that pine tree what's happening.

3 Folks, we could probably, all of us,
4 belabor this case until the cows come home. I
5 could stand up hear and argue my points, and the
6 Defense could stand and argue their points. The
7 question is, are you convinced to a reasonable
8 degree of the standard of proof, which is beyond a
9 reasonable doubt as her Honor instructed you that
10 you only accept that standard, that Nichole,
11 Cordell, and Ru-el collectively caused the death
12 of Omar Clark on November 17th, 2002? We submit
13 that they did.

14 Take any one of them out of the scenario,
15 you don't have this murder. Take Nichole out, you
16 don't have the murder. Take Cordell out, leave
17 Nichole and Ru-el in, you don't have the murder.
18 Take Ru-el out and leave Nichole and Cordell in,
19 you don't have the murder. It is the three of
20 them together in concert that caused the death of
21 Omar.

22 When you review the autopsy protocol, think
23 about the message that these injuries send. That
24 the shooter didn't care who was watching, the
25 shooter didn't care how many times he shot, his

1 only apparent intent was to keep shooting until
2 the high capacity nine millimeter was empty; 9
3 shots to the jacket, of which we have then 4 shots
4 to the body, 21 shots to the pants and the
5 remaining injuries to the legs. As you sit here
6 and try to sort through the charges, aggravated
7 murder with prior calculation and design, murder
8 in the commission of either kidnapping or
9 felonious assault, and the remaining charges
10 themselves of complicity to flow with each count,
11 it's for you to determine in your good judgment
12 and collective wisdom what the evidence sustains
13 and what it doesn't. But we submit that this case
14 cries out for a just verdict. Don't let a debate
15 of semantics about skin tone or complexion sway
16 you from the supporting points of corroboration.
17 This was wrong. And these three individuals are
18 responsible. Please bring back a verdict of guilt
19 that you find just.

20 Thank you.

21 THE COURT: All right. Ladies and
22 gentlemen, we are going to go home for the
23 evening. We will have the charge of the Court
24 tomorrow morning at 9:00. I know we are very
25 close to the end, but the admonition still

1 applies. Don't discuss the case with anybody,
2 don't let anyone discuss it with you. Please
3 don't form an opinion about this case until it is
4 in your hands for deliberations.

5 - - - - -

6 (Thereupon, an adjournment was taken
7 until 9:00 a.m., Tuesday, June 3,
8 2003, at which time the following
9 further proceedings were had:)